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ARCHION,
OR,
A COMENTARY
UPON THE HIGH COURTS
OF
IVSTICE
IN ENGLAND.

Compiled by *William Lambard* of *Lincolns-Inne*, Esquire.

K. 18

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MVSEVM
BRITAN
NICVM

THE EPISTLE

As it was Dedicated in the Manuſcript, to the right Honorable Sir *Robert Cecill* Knight, one of her Majeſties moſt Honourable Privy Counſell.

ALbeit, right Honourable Sir; that my bounden duty towards you, aſwell for the ſingular favour of my moſt Honourable Lord your *Father*, continually extended upon me, as alſo for that *cheerefull Regard* which it hath pleaſed your Selfe to vouchſafe unto me, might have mooved me with the firſt, to gratulate unto You, that Honorable place whereunto you are right worthily advanced: Yet that I may not onely bewray my joy thereof in vaniſhing words, but teſtifie it alſo with

ſome more ſtanding *Memori all* that might remayne. I have purpoſely ſpared to ſee your *Honor*, until that I might come accompanied with this Coppy of mine *Archion*, or *Commentaries of the Courts of England*; whereof ſome I penned ſundry yeares ſithence, others not long agoe, and the reſt ſo lately, that your *Honor* may, if it pleaſe you, take the firſt view and reading of them; where if you ſhall finde eyther *pleaſure* or *profit*, then ſhall I alſo both enjoy the deſire of my *heart*, and the expected fruite of my *Travaile*. And thus hartily praying GOD to increaſe your *Honor* with your yeares, that as you be already by *Nature* the Sonne, ſo you may at the length by imitation become the very *heire* of that Renowned *Neſtor*, and onely *Atlas* of the Engliſh Country and Commonwealth: I humbly pray you to pardon the eſcapes both of me, and this *Writer*. From *Lincolnes Inne this* 22. *of October*. 1591.

Your honors at commandment

Wi. Lambard.

To the Ingenious Reader.

NExt the Knowledge of GOD, and our ſelves, that of our Country takes place, as moſt uſefull and neceſſary. On man at firſt was beſtowed dominion over the other Creatures only, whereas this Ability gives one man Soveraignty over another. This renders us fit for two things in nature moſt different, Obedience and Command. It is alike common to Men, and Beaſts to be borne in a Country, but to be borne for it, is a Happineſſe and Prayſe, which no Brutes, nay few Men attayne to. Moſt bleſſed is he, who can truly deliver this ſpeech to GOD with his laſt breath; I have made the advancement of thy Glory, my onely Study: and next fortunate is he, who dying can ſay to the Common-wealth wherein hee liv'd, I have made thy good, and preſervation

ſervation my only care. *Which granted, I dare be bold to pronounce the Author of this Booke very happy, who imployed all his time to enable himſelfe and others to ſerve this Land, of which he was a Native.*

The dignity of the Treatiſe it ſelfe, refuſeth my Approbation as needleſſe, for (like moſt things elſe meritorious) it is guilty of a little ſelfe-love, and requires nothing but its owne value to commend it. I dare promiſe it long life, and could wiſh it (for your ſake) length anſwerable to the profit and delight it will bring you. Farewell.

ARCHION

ARCHION,

OR,

THE HIGH COVRTS of *Justice* in *England*.

AS there is no doubt, but that continually, even from the first propagation of Mankinde upon the Face of the earth, there hath bin before the Flood *Cain*, *Cainists*, and proud *Gyants*, and after the Flood, *Cham*, *Nimrod*, *Esau*, and such others; mighty hunters and iniutious oppressours of the

Contention hath beene from the beginning.

ſervants of God: So it is not to be thought, but from time to time, even ſithence alſo God hath of his fatherly care and mercifull providence, alwaies ſtirred up ſome of his owne whom he hath endowed, and armed with ſufficient Wiſedome, Authority, and power, not onely to preſerve his little ones from the greedy iaws of ſuch ravenous perſecutors; but alſo after ſome ſort to reſiſt their fury, and to chaſtiſe them for their exceſſe, and outrage. And hereof it was, that whileſt all the world conſiſted of a few Houſholders, the Elder, or Father of the Family, exerciſed authority over his *Meyney*, and did diſtri-

distribute Reward and Paine amongst them after his owne discretion, according as the Poet saith,

Jura dant singuli natis & uxoribus.

But after such time as by Multiplication of *Families* and *Hamlets*, naturall Love was somewhat more cooled, as being derived, and drawne further from his Fountaine: And after such time also, as greedinesse of enioying the fat of the Land had moved debate and dissention, somtimes from the Limits of grounds, whereof the word *Lis* tooke the name; sometime for the use of a *River* or *Water* that ranne betweene the possessions of two

The beginning of Kingdomes.

men, whereof alſo ſuch *Conten-ders* were called *Rivales*, and ſometimes for ſome other cauſes; but yet ſo, that alwaies the mightier, and more miſchievous, did as Bulls in the *Heard*, gore & grieve the weaker ſort. Then fled men (as *Cicero* coniectureth) to ſome one among them, excelling others in *Vertue*, and ſubmitted themſelves unto him, praying that hee would by *equity* ſave them from *iniury*, and maintaine both the *mightieſt* & the *meaneſt* in one indifferency of *right* & *iuſtice*. And as long as they foũd this at his hand, they tooke for *Law* whatſoever he pronounced, & they obeyed as an Oracle whatſoever was commanded by him.

The beginning of *Lawes*.

But when as at the length hee either did convert to his ſingular gaine, that Authoritie which was given unto him for the common benefit of others, or elſe dealt not a like meaſure unto all; but abandoning *Juſtice*, made *Luſt* his *Judge*, and *Might* his *Miniſter*; then forthwith alteration of the former eſtate followed, & then were *Lawes* and *rules* of *Juſtice* deviſed, within the which, as within certaine *Limits*, the power of *governors* ſhould from henceforth be bounded, and ſhould have but one *tougue* and *voice*, wherewith to ſpeake to all ſorts of men.

Againe, after all this alſo, when not only the multitude

The beginning of Courts of *Juſtice*.

of men was growne infinite; but wickednesse also much increased with the time: and consequently *contentions* waxed so many in number, and manifold in matter, as neither any one person was found able to determine the *Suits*, nor any one place sufficed to contayne the *Suitors*: Then accordingly (as *Jethro* advised *Moses*) the *Iurisdiction* or *Charge* of administring *Justice*, was first broken into parts, then *hearing* of *Causes* was divided amongst many persons, and sundry *places* were appointed to that speciall end and service; whereof it came to passe, that the *Israelites*, which were the first people of the world,

to

to whom any *written Law* was given, did pronounce their *Judgements* in the gates of every Cittie, to the end, that both all men might behold the indifferency of their proceedings, and that no man should needs to goe out of his way to seeke *Justice*.

The old *Romans* first within their *Temples*, of purpose to shew that *Judgement* was a *Divine thing*; then afterward in *Curia & Foro*, The *Athenians* also, and their *Temple* called by reason of a special judgement, *Areopagus*, and in the places called *Palladium & Pritaneum*: And albeit the *Gauls* (our neighbours, that be now called *Frenchmen*) did hold their As-

ſemblies for *Juſtice* only at *Cor-*
nuts or *Chartes*, a place ſo ſeitu-
ate in the middeſt of their
Countrey, that all the people
might have indifferent reſort
thereunto: After which orde
alſo the *Britans* of this *Iland* did
make their like meetings as it
might be well gathered out of
Ceſars Comentaries; where he
plainely writeth, that thoſe
Druydes which then were the
Judges amongſt the *Gauls*, had
fetched that their manner of
Diſcipline out of *Britaine*, where
we now dwell: Yet nevertheleſſe, the *Saxons*, our Anceſtors
which ſucceeded them in the
Country, they (I ſay) retained
the manner of the old *Germans*
their owne Elders, who

Tacitus

Tacitus writeth, *Jura per pagos vicosq; reddebant*, and they made distribution of *Justice*, not only in one Towne, or in the Princes *Palace*, but also at sundry other speciall places within the Countrey.

And truely the *Normans* that invaded the posterity of the same *Saxons* heere, did not so much alter the substance, as the name of the *Saxons* order, which they found at their comming hither.

For in effect they did but change the word *Zemore*, which in the *Saxon tongue* signified *an Assembly* or *Meeting*, into the *French* word *Court*, or *Cour*, (for so it is also found written) being a terme of the selfe-

selfe same forme and signifi-
Cour what it signifieth. cation. This *Court* or *Cour* there-
fore is derived of the *Latine*
Curia, which also is fetched
from *Cura*, (as *Valla* writeth)
whereby it is notified, that
heed and care ought to be ta-
ken in the deciding of Contro-
versies.

It signifieth properly both
the Assembly of men for the
hearing of Causes in variance
and the place also where the
Assembly is made: According
to the first of which significa-
tions, the *Saxons* as I said,
Gemore. called it *Zemore*, a meeting, of
Zemeran to meete; and agree-
able to the second, the Kings
house was first called the *Court*,
because the chiefe *Court* of

Justice

Iuſtice was holden there.

The Diviſion of Courts.

But now of Courts, ſome may bee called *Eccleſiaſticall*, ſome *Laic*, and other ſome mixed; that is to ſay, both *Eccleſiaſticall* and *Lay*.

Eccleſiaſticall Courts.

Eccleſiaſticall Courts be many in number, and divers in nature; whereof the greateſt is the *Convocation* of all the *Arch-Biſhops*, *Biſhops*, and whole Clergy of both the *Provinces* of *Canterbury* and *Yorke*, the which is always ſummoned by the Kings Writ, and which can doe nothing without the *Royall aſſent* firſt had and obtayned.

And ſo the ſpirituall Prelats of the upper houſe being aſſembled by the Queenes Writ

in

in the *Convocation*, might after appeale made unto them, determine of matter touching the Queene.

The next to those bee the two *Spirituall Synodes* of *Canterbury* and *Yorke*, to the latter of the which, there are onely three *Bishopricks* subiect, that is to say, *Durham*, *Carlile*, & *Chester*; all the residue owing their *obedience* to the *sea* of *Canturbury*.

Then follow the Court of *High Commission*, in Causes of *Religion*, and the Court of *Delegates*, to the which there lieth *Appeale* from sentence given in the *Arches*. After these bee the generall Courts of the *Archbishop* of *Canterbury*, that is to say, the *Consistory*, or Court of *Arches*,

Arches, aſwell for *Appellations*, as for matters of the firſt inſtance.

The Court of *Audience*, or the *Chancellors* Court, which was wont to be holden in the *Arch-Biſhops* Houſe.

The *Commiſſaries*, or the *Prerogative* Court for *probation* of *Teſtaments*, and the Court of *Faculties* for *Diſpenſations*: If at the leaſt they may bee called a Court which holdeth no Plea of controverſie.

Laſtly, the ſpeciall Courts of this *Arch-biſhop*, namely the *Conſiſtory*, holden by his *Commiſſary* at *Canterbury*, for his owne Dioceſſe, his *Arch-deacons* Court, & the Court of peculiar *Deaneries*, which do belong to him, and do lie in the

Dio-

Dioceſſe of other Biſhops.

The other *Arch-biſhop*, and each other *Biſhop* alſo, hath in his Dioceſſe the Court of his *Chancellor*, and the Court of his *Arch-deacon*, or *Officiall*.

But for as much as the Deſcription of theſe *Eccleſiaſticall* Courts, pertaineth to another Learning, I meane to the *Civill* and *Canon* Lawes, by which they be governed; and for that they doe not peculiarly as the reſt, belong to our nation, and may withall require a ſeverall Treatiſe by themſelves, I will at this time content myſelfe with this bare enumeration of them, as bending my labour chiefly to the diſcovery of the *Laie* or *Temporall* Courts

that

that had, or now have place amongst us.

Lay Courts were at first of two sorts onely, *Base* & *High*: Concerning the beginning whereof, I read, that even as *Moses* (the speciall Minister of *Justice* appointed by God, finding himselfe unable to sustaine the burden of deciding all controversies of the people) did set *Judges* over *Tribes*, *hundreths*, *fifties*, and *tenths* of the multitude, to whom he referred the determination of smaller causes, reserving to himselfe the Knowledge of matters that were of greater importance. So also the *Saxon*, but Christian King of *England*, *Alfred*, divided this whole Realme first into

Lay Courts of two sorts in ancient time.

The first division of this Realme for Jurisdiction.

into *Shires*, then thoſe *Shires* into *Lathes*, *Rapes*, or *Ridings*, and thoſe againe into *Wapentakes*, or *Hundreds*; and laſtly, thoſe alſo into *Leets*, *Boroughs*, or *Tythings*: and did withall eſtabliſh *Juriſdiction* in every of theſe, permitting the *Reeve* or *Iudge* of the lower Roomes, Authority of hearing ſmaller Suits, granting greater power to the *Sheriffe*, and *Aldermen* which had charge of greater Aſſemblies, and retayning to himſelfe the deciſion of ſuch matters as by iuſt cauſe of Appellation, either for *Law*, or *Equity*, ſhould be brought unto him.

Shire Mote. or Shire-Court.

The Court of the whole *Shire* was of two ſorts: whereof

the first then called *Seyneze-more*, that is, the Assembly of the *Shire*, and now termed the *Sheriffes turne*, (was then as now also) holden twice a yeare. And this *Court* was of like *Jurisdiction* to the *Court* of the *Leet*, or of the *Burroughs* or *Tythings*, as it was then called.

The second was the *Hundred Court*, then named *Vndredize-more*, was in these daies appointed to be holde once in a moneth at the least, and that was of like nature to the *County-Court*, which is now kept once every Moneth also. And to the Court *Baron*, and commonly called *Neulzemore*, and corruptly *Haly more*, (that is, (as I sayd)

Hundred Court.

The High Court of Justice before the Council for Law and Court *Baron.*

the Court of the *Hall*, *Mann*
or chiefe place which is no
at this day to bee kept, an
maintained once in thr
Weekes, if the Lord will
have and uſe it.

I read further in the Law
of the *Saxon* King *Edgar* thus
Nazace, &c. Let no man ſeek
to the *King* in matter of var
ance, unleſſe he cannot find
right at home; but if that *righ*
be too heavie for him, then l
him ſeeke to the *King*, to hav
it lightned.

The High Court of *Juſtice* before the Conqueſt for *Law* and *Equity*.

The very like whereof i
effect, is to bee ſeene in th
Lawes of *Canutus* the *Dan*
ſometime King of this *Realm*
alſo.

Out of which Law I ga
the

ther foure things.

1. First, that every man had meanes to sue in those *base Courts* at home in the Country for the recovery of his right.

2. Then, that no man ought to sue out of the Countrey, or to draw his *Plea* from thence, without good cause, both which things doe lie plainely in the Letter of this Law.

3. Thirdly, that the *King* himselfe had a *High Court* of *Justice*, wherein it seemeth, that he sate in person: For the words be, *Let him seeke to the King.*

4. And lastly, that the same Court of the *King*, did iudge not onely according to meere *Right* and *Law*, but also after

Equity and good *Conſcience*.

For firſt the words be, (*Vnleſſe hee cannot finde right at home*) by wich it is permitted, that then he might ſue to the *King* for *right*. Againe, the words ſtand thus, *If Right be too heavy, then let him ſue to the King, &c.* whereby it is meant, that hee ſhould have the *Rigour* of the *Law* mitigated by the *conſcience* of the *Prince*: And after this order, and in thoſe two ſorts of Courts was all *Juſtice* adminiſtred, untill the time of *King William* the *Conquerour*: During whoſe Reigne (as alſo under the government of *King Ruſus* his Sonne) it is to bee thought, that the ordinary courſe of *Juſtice* was greatly diſtur-

diſturbed, aſwell by reaſon of the inteſtine and forraigne Warres, as alſo becauſe that theſe two *Princes* governed by a meere and abſolute power, as in a Realme obtayned by Conqueſt.

But yet it was ſo farre off, that any of them did utterly aboliſh theſe Courts, that the ſame did not onely remaine during all their times, howſoever put to ſilence for a ſeaſon, but alſo had continuance afterwards, and do yet as they may, beare life amongſt us.

For (as I ſaid) thoſe *baſe* Courts of the *Shires*, *Hundreds*, *Burroughs*, and *Mannors*, doe yet remaine in a manner the ſame in ſubſtance that they then

were. And that the *Pleas* ought no more to bee taken from them now in our dayes without cauſe, then they ought then to have beene, may evidently be proved by the *Writs* of *Tolt Pone*, *Accedas ad Curiam*, and *Recordare*, which we now yet uſe, and that to this onely end, to remoove *Suits* upon cauſe, out of one Court into another.

The like I may alſo affirme of that *High Court* which then followed the *King* himſelfe: For albeit that many peculiar *High Courts* be now, ſithence that time, advanced, by reaſon that the multitude of *Suits* ſtill increaſing with the equity and age of the *World*, would

not

not ſuffer them all to be ordered in one place without both intollerable delay of matters, and great vexation of men. Yet nevertheleſſe, if you will throughly behold the matter, and ſubiect about which all theſe Courts are now occupied, you ſhall perceive, that they are but as it were, ſo many branches ſprung out of that one Tree, or ſtreames derived from the ſame Spring and Fountaine.

For letting paſſe theſe Courts of the Countrey, which I have already touched; and alſo thoſe other ſmall *Courts* of *Record*, that be in *Cities* and *Towns* corporate; yea, and the *Pye Powders* Court it ſelfe, that

Pye Powders of *Pyes* feete, and *Powlders* duſty, becauſe it is for Travellers to the Faire.

lasteth no longer then the *Faire*. I lay, that all our Higher Courts at this day, be either Courts of *Rights* and *Law*, or else of *Equity* and *Conscience*, as they then were; although they now require another subdivision then they then had, and that if you will, may be this.

The divisiō of the *Lay* Courts at this day.

The Courts of *Law* doth either handle *civill*, or *criminall* Causes, and these *civill* Causes be either moved betweene the *Prince* himselfe, and his *Tennants* and *Subiects*; or else betweene *Subiects* themselves; & that either of our owne *Realme* only, or of it, & another *Realme*.

Those Courts of *Law* that hold *Plea* of *common*, or *civill* matters growing betweene the

King,

King, or the *Prince*, and his *ſubiects*, be theſe: The *Exchecquer* deviſed for the ſafe cuſtody of the *Crowne-lands*, and for the faithfull anſwering of the *Revenues* of the ſame. The Court of *Wards* and *Liveries*, the Court of the *Dutchy* of *Lancaſter*, and the *Chancery* Court, at the leaſt ſo farre forth as the ſame hath to doe with *Petitions*, *Travers iuram. de droit*, and ſuch like caſes.

Thoſe other Courts of *Law*, that have *Juriſdiction* of *ciuill* or *common* Pleas, ariſing betweene our owne ſubiects, be theſe.

The Cõmon Pleas, or Bench, the *Marſhalſey* for matters within the *Verge*, or limits aſſigned to the *Kings* Houſe, or *Palace*.

The

The *Admiralty Court* for marine cauſes, and the *Kings Bench*, ſo farre forth as it doth retaine *Juriſdiction* in matters of *Debt*, *Aſſumption*, *Actions* upon the *caſe*, and ſuch other things properly tryable in the *Common place*, and not here; and theſe be the Courts of meere Law, that have ordinary reſort and Iuriſdiction.

The Courts of *Conſcience* for *Civill* Cauſes, bee theſe: The *Chancery* open to all men: The Court of *Requeſts*, that ſpecially heareth the Suits of poore men, and the *Princes* ſervants.

The *Chancellors* Court within the *Exchecquer*, and the two Councells eſtabliſht the one in *Wales*, the other in the *North-*

North-countrey, both consisting of *President* and *Counsaile*, like unto those which in *France* are called *Parliaments*.

Criminall Causes belong either generally to the *Kings Bench*, or to the Court of *Starchamber*, or else specially to the *Constables* Court of the *Marshallsey*, *Admiralty*, *Gaole delivery*, *Oyer* and *Terminer*, and *Sessions* of *Peace* for our owne subiects, or to the *Wardens* Courts in the *Marshes*, for Causes of that kind betweene us and the *Scots*.

The order of this discourse of *Lay* Courts.

But now, to the end that it may more evidently appeare, how, and by what degrees of encrease these mayne Courts have sprung out of that one, it is requisite that I proceede

in

in the History of King *William* the *Conquerour* where I left, and descend from him downward, untill I have set them all on foot, not in the order which I have layd, but Historically, and as the time it selfe begat them.

The Court of Exchequer.

It is confessed by all Writers, that the *Conquerour*, (after such time as hee had suppressed the forces of those that made head against him here) did immediately cause the whole *Realme* to bee exactly surveyed by *Shires*, and *Hundreds* severally, aswell for the understanding of Woods, Pastures, Meadowes, and Tillages thereof, as also for the profit of Churches, Mills, Villains, and of all

all other commodities whatsoever. The Record of which survey was then called *Domesday Booke*, and was appointed to be kept in the *Exchecquer* at *Westminster*, where it now resteth. And that Court also did he then newly erect for the order of his *Revenues*, after the name of his *Exchecquer* in *Normandy*, though in the manner thereof it differed not a little from it: for the *Exchecquer* of *Normandy* had not only the government of the Revenues of the *Duke* there, but was also the Soveraigne Court for Administration of *Justice* among his subiects, and so continued, until that *Lewis* the 12. King of *France*, in the yeere after *Christ* 1499. converted it into a

Court

Court of *Parliament*, consisting of President and Counsellors, and established it at *Roan* in *Normandy*, where it now remaineth.

But this his *Exchecquer* in *England*, had only the direction of his *Demesnes* and *Receipts*, the administration of *Common Justice*, continuing still in that other *High Court* of his, as it was before his comming hither.

For proofe of which matter, I call to witnesse *Gerrasius Tilberiensis*, a learned man, that lived so neere to the time of the *Conquest*, that hee confessed that hee had Conference with *Henry* the Bishop of *Wincheſter*, which was Sonne

to

to the *Conquerours* owne Sister.

This man was an *Officer* of the *Exchecquer* here, and penned speciall *Dialogues* of the Obſervations of the *Exchecquer*, which is Dedicated to King *Henry* 2, and be yet remayning in the *Receipt*, under the cuſtody of the *Chamberlaines* of the *Exchecquer*, in the *Blacke booke* there. In the firſt part of which his *Dialogues*, and the firſt *Chapter*, hee *writeth* for the advancement of the *Antiquity* of the *Exchecquer*, that it was brought out of *Normandy* by the *Conquerour*, and for the *authority* of that Court hee hath amongſt other words theſe following: *Nulli licet Statutum Scaccarij infringere, vel*

eis

eis quavis temeritate resistere; habet enim hoc commune cum ipsa Domini Regis Curia, in qua ipse in propria persona Jura decernit, quod nec Recordationi nec Sententiæ in eo latæ liceat alicui contradicere: whereby it is plainely proved, that the Court of the *Exchecquer* was at that time a distinct Court from that Court of the King, in the which hee himselfe sometimes, and commonly his Iustice (called then *Prima Justitia*) did use to sit: the one Court having Authoritie over the Kings Demeasnes and Receipts, as *Gerrasius* in that worke at large discourseth: and the other using the power of distributing of *common Justice*, as his words in this place doe

doe ſufficiently purport. And therefore I cannot but heere by the way note the errour of them which doe maintaine, that the *Exchecquer* was (in this time of King *HENRY* the ſecond) a Court of whatſoever *Common* Pleas for all Subiects whatſoever, and which (for proofe of their Aſſertion) doe alleadge the Title of Maſter *Glanviles* Booke in part thus: *Et illas ſolum Leges continet, & conſuetudines, ſecundum quas Placitatur in Curia Regis ad Scaccarium.*

For overthrow wherof, firſt I ſay, that the words of the Title be not the words of *Glanvile* himſelfe, but of that man (whatſoever hee were)

that publiſhed his Booke in *Print*; for hee intituleth his Booke thus.

Tractatus de legibus de tempore Regis Henrici ſecundi, compoſitus illuſtri viro Ranulpho de Glanvilla iuris regni, & aliquarum conſuetudinum eo tempore peritiſſimo: which doth plainely bewray that he ſpake of *Glanvile* as of another man, and which alſo lived not then, but at another time.

Secondly, I affirme, that if it were the ſpeech of *Glanvile* himſelfe, yet if you will take the reſt of his words with you, then you ſhall ſee that they have another meaning: for the words ſtand together *Secundum quas placitatur in Curia Regis*

ad

ad Scaccarium, & coram Juſticiarijs ubicunq; fuerint : ſo that if you read them, the point *Comma* next after the word *Regis*, then they will yeeld you three Courts, that is to ſay, the *Exchecquer*, the Kings Court of *Juſtice* at large : But if they be taken without any ſuch point, yet the words *Coram Juſticiarijs ubicunq; fuerint*, doe ſet forth that other Court of the King, whereof I doe now intreate.

Laſtly, I undertake to ſhew you, not by the *Title*, but by the *Text* of *Glanviles* owne booke ; that in his time the Kings Court was one, and the *Exchecquer* was another : For throughout his whole *Worke*, he calleth the Court of *Common*

Pleas Curiam Domini Regis, and the ſtyle of the *Writs* thereof is, *Quod ſit coram me vel Juſticiarijs meis*; but when he commeth to ſpeake of the *Exchequer*, he talketh of Accompts to be made to the King there, and of none other matter; as namely, in the 7. Booke, and 10. *Chapter*, where hee hath this, *Si Dominus Rex Cuſtodiam alicui commiſerit, tunc diſtinguitur utrum ei cuſtodiam pleno iure commiſerit: Ita quod nullum inde reddere compotum oportet ad Scaccarium aut aliter*: But before I leave this King *Henry* 2. I muſt adde this alſo; That hee in the three and twentieth yeare of his Reigne, did (by the advice of his Sonne and Biſhops)

Biſhops) cut the Realme into ſixe parts, and to every of theſe parts appointed 3. *Juſtices*, which by *Henry Bracton* is called *Itinerantes*: And in *Britons* booke *Juſtices in Eyre, quaſi errantes*, (as *Gerraſius* of *Tilbury* expoundeth it) in reſpect (as it ſeemeth) of thoſe other which were firſt called *Reſidentes*, and afterwards *de Banco*, for the reaſon of their certaine ſitting without remoove. *Juſtices in Eyre.*

The proper names of which *Juſtices* are ſet downe by *Roger Hoveden*, who alſo deſcribeth their Circuits, not to differ much from the ſame that our *Juſtices* of *Aſſize* doe now ride: and theſe *Juſtices* held *Plea* aſwell of *Criminall* as of *Civill*

Suits, and ſo continued till the beginning of the Reigne of King *Edward* 3, by which time their Authority was by little and little weakened, partly by a former advancing of certaine new *Juſtices*, called of *Aſſize*, (becauſe their firſt Office was, to take *Aſſizes* in every Countrey) whereunto it was afterwards added, that they with others ſhould take *Attaints*, *Juries*, and *Certificats*, and deliver the Gaoles alſo; and partly by the erecting of *Wardens* of the *Peace*, (afterwards called *Juſtices* of the *Peace*) to whom likewiſe Iuriſdiction of ſundry ſorts was given, and committed; ſo that about the beginning of the Reigne of

King

King *Edward* 3, the Seſſions in in Eyre did altogether ceaſe, and take leave. And ſo I conclude, that not onely during all the time of the *Conquerour* himſelfe, of *William* his Sonne, and of his other Sonne *Henry*, which was a peaceable Prince, and a maintainer of ancient *Lawes*, and learned in them; whereof hee had the name *Beauclarke*, but alſo under the government of King *Stephen*, and of this *Henry* 2, there was one High Court following the King, which was the place of ſoveraigne Iuſtice both for matter of *Law* and *Conſcience*, and one other ſtanding Court, which was governeſſe onely of the Land and Revenues of the

Crowne. The first of which was then called *Curia Domini Regis*, and *Aula Regia*, for that the Prince himselfe did many times sit in person there, and had Iustices *a Latere suo residentes*, (as *Bracton* saith) namely, his chiefe *Justice*, *Chancellor*, *Constable*, *Marshall*, and others. The latter was then as it is now, called *Scaccarium eo, quod Lucibilis Scaccarij formam haberet*, if you will give faith to *Gervase Tylburie*; or else it tooke the name of *Scaccarium* (as *Paulus Emilius*, and after him *Polydor Virgil* doe write of it) or was called *Exchecquer* of *Eschaets*, because it had the order of those things which the *Civilians* do cal *Caetuca*, & we *Eschaets*.

And

And in this the Prince ſate not perſonally at any time, but his chiefe *Juſtice* as *Preſident*, and then the *Chancellor* of the *Exchecquer*, the *Treaſurer*, and *Barons*. And in this plight that High Court of the King continued, untill that *Henry* 3. in the *ninth* yeare of his Reigne, which was about the time in which hee aſpired to the age of 21. yeeres, finding by experience, that it was either chargeable or dilatory, or both, for his ſubiects to have no other remedy for tryal of their *rights*, but either before himſelfe in that *ſupreme Court*, which remoued with him whereſoever he went, or before thoſe *Juſtices* in *Eyre* which came not yeerly

into

into the Countrey, granted unto his Subiects that great Charter of the Liberties of *England*, in the 11. *Chapter* whereof he ordained thus, *Communia Placita non ſequantur Curiam noſtram, ſed teneantur in aliquo certo loco.* Wherupon followed two things: The firſt, that a new Court was erected for the determination of ſuch *Pleas* as did not concerne the *Crowne* and Dignity of the *Prince*, but were meerely *Civill*, and did belong to the Subiects betweene themſelves: The ſecond, that this Court was eſtabliſhed in a place certaine, and that was at *Weſtminſter*, to the end that the people might have a ſtanding place of *Juſtice*, where-

whereunto they might reſort, for the tryall of their owne Cauſes, and not be driven to follow the King and his *Court*, but only where the matter reſpected him. And after this all the *Writs* that are recited in *Henry Bractons* Booke, which was *written* in the latter end of the Reigne of this King *Henry* 3, have this *commandment* to the party, *Quod ſit coram Juſticiarijs meis apud Weſtminſter*, and not *Coram me vel Juſticiarijs meis*, as the former forme in *Glanvile* was. And thus began that Court, which becauſe it hath power over *common Pleas*, we now call the *common Pleas*.

About this time alſo, (or not long after) ſome other Courts

The diviſion of the Courts of *Britaine*.

Courts of Iuſtice were likewiſe opened, as it may partly appeare by *Henry Bracton*, but more plainely by *John Britton*, who followed immediately after him.

For in the Reigne of King *Edward* 1, this *John Britton*, then Biſhop of *Hereford*, whoſe name maſter *Bale* in his *Centuries*, or his *Printer* miſtaketh, and calleth *Becton*, being ſingularly learned in the Lawes of the Realme, (did) at the commandment of that King, in his name compile a booke, now imprinted, and named *Brittan*, in the beginning whereof hee parteth all Iuriſdictions thus.

1. Firſt, that the King himſelfe hath ſoveraigne Iuriſdiction

tion above all others in his Realme, to iudge in all cauſes whatſoever.

2. Secondly, that the *Marſhall* of the Kings Houſe, have the place of the King to heare, and determine *Pleas* of the Crowne within the *Verge*, and that the *Juſtices in Eyre* have like Authoritie in every Countrey once in ſeven yeares.

Marſhall of *Mars*, *Marſhall* of *Mare* a Horſe, and *Shalk* a governour, that is, Maſter of the Horſe.

3. Thirdly, that the Iuſtices ſhall follow the King whereſoever hee goeth, and ſit in his place, have Connuzance of *erroneous Judgements*, *Appeales*, and other matters concerning the Crowne.

4. Fourthly, that the *Coroner* of the Houſhold have his proper

proper power within his *Verge*, and that he and others have the order of *Weight* and *Measure* throughout the Realme.

5. Then that *Sheriffes*, *Coroners*, *Hundreds*, *Burghesses*, *Serieants*, and *Beadles* have their Courts within every their particular limits.

6. Sixtly, that *Justices* being continually at *Westminster*, have Authoritie concerning the Kings *Debts*, and *Fees*, and all things incident thereunto.

And lastly, that other *Justices* have the charge of *Assizes*, and of the delivery of Gaoles in every *Countie*.

And for asmuch as after this distribution of power thus made to hold Plea, some of these

theſe Courts would not con-
tayne themſelves within their
appointed limits, but ſought
to enlarge their Authoritie by
uſurping Iuriſdiction that was
appropriate to others, the ſame
King did by Parliament hol-
den the 28. yeare of his reigne,
confirme the great Charter for
ever, and in certaine Articles,
as he called them, ſet forth
upon the *Charter*, did then by
like Authority of Parliament,
enact, that they of the *Ex-*
checquer ſhould not take know-
ledge of any *common Plea*, that
the *Seneſchall*, or *Steward*, and
the *Marſhall* of the Kings
Houſhold ſhould not hold
Plea of Franketenement, but
content themſelves with the
hearing

Seneſchall of *Sein* a houſe, and *Schale* a Governour: So *Steward* of *Stew* a houſe, *Ward* a Keeper.

hearing of *Treſpaſſes*, *Contracts*, and *Covenants* made within the *Verge*, and that the *Chancellor* and the *Juſtices* of the *King's Bench* ſhould follow him whereſoever he went, to the end hee might alwayes have men about him, that were able to deliver *Law* to ſuch as ſhould require it.

Hitherto as you ſee, there is no expreſſe mention in *Britaine*, either of the Court of the *Admiralty*, the *Conſtables* Court, or of the *Chancery*, *&c.* Therefore it remaineth yet, that wee labour to finde out from whence they alſo fetched their beginning.

And that ſhall we the more eaſily doe, if we give heed to

this

his that *Britton* hath already o-
ened: for hee leaveth the *ſove-*
aigne Juriſdiction of all Cauſes
n the *King*: So that whatſoever
he King hath not particular-
y delivered out to others, his
uſtices *Commiſſioners* and *De-*
egats that ſtill remained in
imſelfe, and was exerciſed
ither by himſelfe in perſon,
r by his *Chancellor*, *Counſel-*
ors of Eſtate, and *Juſtices* of
Law that continually atten-
ded upon him for that ſer-
vice.

And therefore, firſt concer- The Admi-
ning the *Admiralty*, I think that rals Court.
the deciſion of *marine* Cauſes
was not put out of the Kings
Houſe, and committed to the
charge of the Admirall, untill

the time of King *Edward*
whereunto I am led partly b
the consideration of the tim
of his Reigne, which wa
much occupied with affaire
beyond the Sea, both by rea
son of the warres in *France*, and
of the Entercourse and Trad
of Merchandize which the
flourished, and partly for tha
I finde no mention of the *Ad*
miralty before the second yeer
of the reigne of King *Richard* 2
who going about by a *Statut*
made in the 13. yeere after hi
comming to the Crowne, to
restraine the authority of tha
Court, which had exceeded
her knowne limits, doth take
order that she doth meddle no
further then she wonted to do

in the time of his *Grandfather* King *Edward* 3, thereby reducing her *authority* (as I thinke) to the first originall. This *Admirall* hath the name of the Greeke word θαλασσιαρχὴς, which being declined, and fallen from *Admirale* to *Admirall*, as Doctor *Caius* our Countreyman, following *Paulus Emilius*, writeth, doth signifie the *Governour*, or *Captaine* of the Navie.

The Court of the *Constable*, or *Marshall* of *England*, determineth Contracts touching deeds of *Armes* out of the Realme, and handleth things concerning *Warre* within the Realme, as *Combats*, *Blazon*, *Armory*, *&c*, but it may not

The *Constables* Court.

deale with *Battaile* in *Appeale*
nor generally with any othe
thing that may be tryed by th
Lawes of the Land.

And albeit that *Britton*
whoſe purpoſe was only to ſe
forth the Courts whereof ther
was common uſe, hath no
numbred it among the Court
of that time, yet I doe veri
ly beleeve, that it came hithe
with the *Conquerour* out of *Nor*
mandy: for amongſt other *Lawe*
of his, this is one.

That if a *French man* doe ap
peale an *Engliſh man* of periur
or murder, the *French ma*
may defend himſelfe by *Bat*
taile, which was then termed in
Engliſh Erneſt; a word tha
we keepe yet, ſaying, when

wee ſee a man fight, hee is an *Erneſt*: And for aſmuch as the thing it ſelfe was then (and never before) permitted by *Law*, it is to be granted, that there was even then alſo ſome *officer* who had the charge to ſee it performed according to *Law*, who no doubt was the *Conſtable*, as it may well appeare not only by ſome *Records* of *Hiſtory*, but alſo by a ſpeciall *Preſident* that I have ſeene cõcerning the whole order of proceeding in that behalfe before him: this man alſo had the name *Conſtable*, as *Johannes Tullius* thinketh, of the *Latine* word *Comeſtabilis*, *quaſi comes ſtabuli*, that is, *Archippocomes*, or the Mr. of the *horſe*, as we ſpeak: but as *Iohannes Garopius*

affirmeth, the word *Conſtable* (or rather *Conning ſtable*) is derived of *Conning*, that is to ſay, a *King*, and of *Stable* which ſignifieth a *proppe*, or *ſtay*, becauſe the *Conſtable* being a principall Perſonage neare unto the *King*, is a great ſtay and aide unto him.

But now as touching the *Chancellor*, becauſe I purpoſe to ſpeake of him and this Court ſomewhat more largely, it ſhall not be amiſſe, firſt to derive his name, then to divide his authoritie and office, and after that, to ſearch for the beginning of him, and his Court, and laſtly, to ſpeake a word, or twaine of the *Equity* by which he is ſaid to rule his *ſentence*.

Our

Our *French* word *Chancellier* is fetched from the *Latine Cancellarius*, and that from *cancello*, and they all three framed out of the *Greeke*, which ſignifieth properly to make *Lattiſes*, *Grates*, or *Croſſe-barres*, to encloſe any thing withall, and *Metaphorically*, to bound and contayne any thing within certaine *barres* and *limits*.

The *Chancellor* and *Chancery* Court.

And out of theſe two ſignifications, two principall parts of his *Office* doe iſſue: for after the Similitude of thoſe *croſſed barres* or *Lattiſes*, he is ſaid to *cancell*, deface, or make void a Record, becauſe the *vacat* thereof is done, by drawing certaine croſſe lines Lattiſwiſe with his pen over it, whereby

it is ſo incloſed and ſhut up, that from thenceforth no exemplifications thereof may be given abroad.

And likewiſe in his Court of *Equity*, hee doth when the caſe requireth, ſo *cancell* and *ſhut up* the Rigour of the generall *Law*, that it ſhall not breake forth to the hurt of ſome one ſingular caſe or perſon.

The *Office* and *Juriſdiction* of this man is manifold: For uſually he is a great perſonage, a *Counſellor* of the Eſtate; and *Prolocutor* or *Mouth* of the *Higher Houſe* of *Parliament*: He is alſo *Keeper* of the *Great Seale* of the *King*, and was wont to bee elected Heire hereunto by Authority

thority of *Parliament*. For I have read, that *Raph Nevill* the *Biſhop* of *Chicheſter*, being *Chancellor* to King *Henry* 3, refuſed to yeeld up his *Seale* unto him when he required it, affirming, that as hee had received it by the Common Councell of the Realme, ſo hee would not without like *Warrant* reſigne it againe: and in the dayes of the ſame King, it was told him by all his Lords *ſpirituall* and *temporall*, that of ancient time the *Creation* and *Depoſition* of the *chiefe Juſtice*, the *Chancellour*, and the *Treaſurer*, belonged to the *Parliament*.

And beſides this *Seale* of ſpeciall Grace, the *Chancellour* hath

hath alſo the Seale of ſimple *Juſtice*, and keepeth (as it were) the forge and ſhop of all *Originalls*. He hath moreover double Iuriſdiction, the one of *Common Law*, the other of *Equity*, that firſt being limited in power, and his latter being more abſolute and infinite.

According to the rule of *Law* he holdeth Plea (by Bill in *Latine*) for *Priviledge* of the *Miniſters* of his *Court*, and their *Attendants*. So alſo upon *Recognizances*, *Statutes*, *audita querela*, *petitions monſtrans de droit*: and ſo of *Wards*, *Liveries*, and *Ouſter le Mayne*, before a ſpecial Court was erected therefore: And of theſe he may hold *Plea* at all times, aſwell within the terme,

as

as after; according to his *conſcience* (guided by *Equity*) hee relieveth thoſe that complaine, (by *Engliſh Bill*) either for that the *Common Law* oppreſſeth them with rigour, or elſe for that it hath not fit medicine for their diſeaſes and griefe: Hitherto of the *Name* of *Office* of the *Chancellor*.

Now for the better underſtanding of the beginning of them both, wee will examine the matter by parts: and firſt for his originall duty, I will uſe one or two teſtimonies of Antiquity. King *Edward* the *Confeſſor* immediately before his *death*, granted by his *Charter* many poſſeſſions and priviledges to the *Abbey* that was

called

called Saint *Peters* in *Weſtminſter*, in the concluſion of which *Charter* hee ſaith thus: *Ad ultimum Chartam iſtam ſigillari iuſſi, & ipſe manu mea propria Signum X Crucis impreſſi, & idoneos teſtes annotari precepi*: And then after the Subſcription of *him* and the *Queene*, and after the *Arch-biſhops*, *Biſhops*, and *Abbots*, one *Reinbaldus* is named *Cancellarius*: And in the end of all, after the Date of the Charter, it is written thus, *Siwardus Notarius ad vicem Reinbaldi Regiæ dignitatis Cancellarij hanc chartam ſcripſi, & ſubſcripſi.*

After this, King *William* the *Conquerour* gave by another *Charter* to the ſame *Abbey* ſundry

Lands

Lands in exchange for *Windſor*, which K. *Edw.* had beſtowed upon them: and in the end of this *Grant* he likewiſe ſaith, *Ego Willielmus Dei gratia Rex, & Dux Normaniorum, atq; Princeps Genomanorum hoc ſcribi præcepi, & ſcriptum hoc ſigno Dominicæ crucis X confirmando ſtabilivi, noſtræque imaginis ſigillo inſuper aſſignari curavi*, and (then in order as before) it followeth, *Ego Mauricus Regis Cancellarius favendo relegi & ſigillavi*: Heereby it appeareth, that the Office of the *Chancellour* then was, at the firſt, to *make* and *ſeale* the Inſtruments that paſſed from the *Prince*.

And this I call his originall Duty, becauſe it cannot be credi-

called Saint *Peters* in *Weſtminſter*, in the concluſion of which *Charter* hee ſaith thus: *Ad ultimum Chartam iſtam ſigillari iuſſi, & ipſe manu mea propria Signum X Crucis impreſſi, & idoneos teſtes annotari precepi*: And then after the Subſcription of *him* and the *Queene*, and after the *Arch-biſhops*, *Biſhops*, and *Abbots*, one *Reinbaldus* is named *Cancellarius*: And in the end of all, after the Date of the Charter, it is written thus, *Si-wardus Notarius ad vicem Reinbaldi Regiæ dignitatis Cancellarij hanc chartam ſcripſi, & ſubſcripſi.*

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credibly ſhewed out of any *Hiſtory*, (as I thinke) that ever there was in *England* any ſealing of *Writings*, or mention of the name of *Chancellor* before the dayes of this *Edward*, who having ſpent a great part of his age in *Normandy*, firſt brought the uſe of the *Seale* from thence into this *Realme*, and with it (as I ſuppoſe) the name of *Chancellor* alſo.

In whoſe time alſo *Leofricus* the *Brittaine*, is the firſt that I finde named *Chancellor*: For that we learned of the *Normans* one manner of ſealing, *Ingulphus* the *Abbot* of *Croyland*, (which came out of *Normandy*, hither in the trayne of the *Norman* Conqueſt) aſſureth us in writing

writing thus: *Normani Chirographorum confectionem cum crucibus aureis, & alijs ſignaculis ſacris in Anglia firmari ſolitam in cera impreſſionem mutabit, &c.* And that the name of him that kept this *Seale*, came out of *France*: Alſo it may be probably conjectured, both by the words which wee found nearer to the pronuntiation of the *French*, then of the *Latine*; and alſo by the Office it ſelfe, which hath bin exerciſed in *France* under the very ſame name and nature that we uſe it, ever ſince the time of *Charlemaine* at the leaſt.

And ſo it is manifeſt, that the *Chancellor* did beare this name, and had this charge of the Kings *Seale* and *Writings* both

both before, and in the time of the *Conquerour*: The which alſo without all doubt, hee hath ever ſince continued. Howbeit when (I ſay) Writings, I doe not meane that hee had the Authority of making originall Writs here before the time of the Conqueſt.

For thoſe came out of *Normandy*, alſo as the very formes of the moſt of them being expreſſed in the booke of the *Norman* Cuſtomes may lead a man to thinke.

And that the rather, becauſe the *Saxons* (our Anceſtours) whoſe proceeding in Iudgement was *de plano*, and without *Solemnity*, did not uſe (ſo farre as I have hitherto obſerved)

ved) to call the parties by any *Writ* or *Writing*, but to send for them by certaine meſſengers, which they termed *theſes*; that is to ſay, *Miniſters*, or *Servants*, even as in the *Norman* Cuſtomes; it ſeemeth that they ſent *Sergeants* without Original Writs, or Mandate in Writing; yea, and when that manner of Summoning by Writ was brought into uſe and cuſtome heere, yet was not the ſealing of the Writts forthwith committed to the Chancellour: For you may ſee in *Glanviles* Booke that the original Writs of this time, had this forme: *Teſte Ranulpho de Glanvillo, &c.* which was the name of the Chiefe Iuſtice

of the *Kings* Courts, then under whoſe ſealings they paſſed abroad. Nevertheleſſe, for aſmuch as it is to bee read in *Bracton*, *Quod omnia brevia de pace*, which are *Prohibitions* indeed, *irrotulari debent in Rotulo de Cancellaria*: And for that, not onely the Statute of *Weſtminſter* the ſecond, which was made in the 13. yeare of King *Edw.* 1, ſaith in plaine words, that the *Formidone in Reverter ſatis eſt in uſu in Cancellaria*, and hath often mention of the Clerks there: but alſo that other Statute of *Articuli ſuper chartas*, hath the expreſſe names of the *Chancellour*, and the *Chancery*. It muſt be confeſſed, that the *Chancellour* had the keeping

of the *Rolles* of *Record*, and the making out of Writs originall either at the ſame time that the *Common place* was erected, or not long after it; that is to ſay, either under the Reigne of King *Henry* 3, or elſe in the beginning of *Edw.* 1, which later King (as Iudge *Priſot* reporteth of him) laboured carefully to reduce our Law into order and writing; and in my *opinion* may therefore not unworthily bee accounted our *Engliſh Juſtinian*. And albeit the houſe of the *Rolles* which hath beene of long time (as it were) the Colledge of the *Chancery men*, was builded at the firſt by the ſame King *Henry* 3. for another purpoſe,

namely for the ſuſtentation of ſuch *Jewes* as would give their names to *Chriſt*, and was therefore called *Domus Judæorum converſorum*: yet that hindreth not, but that the ſame Houſe might ſhortly after be converted to another vſe upon experience, as it is likely that few *Converts* were found amongſt the *Jewes* for to inhabit it.

And then, thus have you the *Chancellour* furniſhed with the Seale of *Grace*, and Seale of *Common Juſtice*, and with him the *Chancery*, for keeping of *Records*, and the Clerks thereof for the framing of *Writs*.

And as touching the Authority in Iudgement, I ſee not

not what Iuriſdiction he hath; (his Court of *Equity*, and ſome powers given by late Statutes onely excepted) which is not incident to the making or keeping of *Records*: For he cannot forgive the errour of another Court; yea, errour committed in his owne Court, ſhall be reverſed in the *Parliament*: neither can hee try any iſſue taken before him; for that alſo muſt bee done in the *Kings Bench*, as a thing without his Iuriſdiction, and that mooved *Scroope*, *Chiefe Juſtice* of the *Kings Bench*, as I have ſeene *Mi.* 1. *Edward* 3. in a written Report to ſay, that the Chancery and the *Kings Bench* were but one

place, viz. the *Bench* of the King, and that the *Chancellour* may by his hand without writ, deliver any thing to bee tryed in the *Bench* of the King.

It remaineth then, that I ſpeake of his Court of *Equity*, which in my fantaſie is not altogether ſo ancient as the other: For as you have heard before, King *Edward* 1. and the *Parliament* then tooke order, that the Chancellour ſhould follow the King even as the *Judges* of the *Bench* did, to the end, that hee might have alwayes at hand able men for his direction in Suits that came before him.

The meaning whereof (as I thinke) was, that the *Juſtices* ſhould

ſhould informe him of the Law, and the *Chancellour* of *Equity*; for otherwiſe I ſee not what uſe he could have of the *Chancellour* in this behalfe; but onely for that hee being commonly a *Biſhop*, or other ſpirituall perſon, was the more meete after the opinion of men in thoſe dayes, to give advice according to *Equity* and a good *conſcience*: in which reſpect alſo he was *Viſitor* for the King, and beſtowed his *Beneficeſ*: ſo that, ſuch as then ſought reliefe by *Equity*, were ſuitors to the *King* himſelfe; who being aſſiſted with the *Chancellor*, himſelfe, did mitigate the ſeverity of the *Law* in his owne perſon, when it pleaſed him to

be preſent, and did in abſence either referre it to the Chancelour alone, or to him, and ſome other of the Councell; and this continued (if I be not deceived) untill the twentieth yeare of the Reigne of King *Edward* 3, in which yeare when he made preparation for his Warre upon *France*, it was enacted by *Parliament*, that the *Chancellour* and *Treaſurer* ſhould determine all Complaints againſt extortion of *Officers*, mainetenance, imbracery, and ſuch like offences. And albeit that indeed this *Authority* bee neither granted to himſelfe alone, nor doth plainely erect any Court of *Equity*, yet for aſmuch as it is the firſt

ſeverall

ſeverall power of this ſort, that I finde committed unto him from the King, in which alſo it is to be thought, that the proceeding was extraordinary, and abſolute even as the *Kings* owne before was: I ſuppoſe it to be the laying of the firſt ſtone of the *Chancery* Court. But after this, in the 36. yeare of the ſame Kings Reigne, it was provided by *Parliament*, that if any man were grieved contrary to the Articles of that *Parliament*, or others, then hee ſhoud have Remedy in the Chancery without other Suite: By which Law the Chancellor was not only made ſole *Judge* in this newly erected Court, but

but was enabled alſo to proceed in iudgement thereafter by his owne diſcretion: for otherwiſe the words without other ſuite were not beneficiall. After this alſo his *Authority* was from time to time enlarged by ſundry *Parliaments*, as by one to award damages upon an untrue ſuggeſtion made before him: by another, to ſend *Proclamations* of Rebellion againſt ſuch as would not appeare: and by others, both to grant *Commiſſions* of divers kinds, and to doe many other things, whereof it is not needfull to make rehearſall here.

And truely as theſe bee the firſt beginnings that I can find in *Statute-law* concerning this

authority

authority of the *Chancery* Court, ſo alſo I doe not remember, that in our *Reports* of *Common Law*, there is any mention of of Cauſes before the *Chancellour* for helpe in *Equity*; but onely from the time of King *Hen.* 4. in whoſe dayes (by reaſon of thoſe inteſtine troubles) *Feoffements* to *uſe*, did either firſt begin (as ſome hath thought) or elſe did firſt grow common, and familiar as all men muſt agree.

For remedy in which caſes of *Vſes*, chiefely the Chancery Court was then fled unto, as the onely *Altar* of helpe and refuge: But whenſoever this Court of *Equity* tooke beginning to be a diſtinct Court, I have

have made proofe (as I thinke) that the power thereof was alwayes in exerciſe.

And conſidering that the *Prince* of this Realme, is the immediate miniſter of *Juſtice* under God, and is ſworne at his *Coronation*, to deliver to his Subiects *æquam & rectam Juſtitiam*; I cannot ſee how it may otherwiſe be, but that beſides his Court of meere *Law*, he muſt either reſerve to himſelfe, or referre to others a certaine ſoveraigne and preeminent power, by which he may both ſupply the want, and correct the Rigour of that poſitive or written Law, which of it ſelfe neither is, nor can be made ſuch a perfect Rule,

as

as that a *Man* may thereby truely ſquare out *Juſtice* in all Caſes that may happen.

For *written Lawes* muſt needs be made in a generality, and grounded upon that which happeneth for the moſt part, becauſe no Wiſedome of man can fore-ſee every thing in particularity, which Experience and Time doth beget.

And therefore although the *written Law* be generally good, and iuſt in ſome ſpeciall caſe, it may have neede of Correction, by reaſon of ſome conſiderable Circumſtance falling out afterwards, which at the time of the Law-making

king was not fore-ſeene: Whereas otherwiſe, to apply one generall Law to all particular caſes, were to make all *ſhooes* by one *laſt*, or to cut one *glove* for all *hands*, which how unfit it would prove, every man may readily perceive. And hereof this *Equity* hath the name in Greeke ἐπιείκια, of ἐπὶ *ſecundum*, and εἰκὸς *conveniens*, *vel rationi conſentaneum*; becauſe it doth not onely weigh what is generally meet for the moſt part, but doth alſo conſider the perſon, time, place, and other circumſtances in every ſingular caſe that commeth in queſtion, and doth thereof frame ſuch iudgement as is convenient and agreeable

to the ſame: So that in ſumme the written *Law* is like to a ſtiffe rule of *Steele*, or *Iron*, which will not be applied to the faſhion of the *Stone* or *Timber* whereunto it is laid: And *Equity* (as *Ariſtotle* ſaith well) is like to the leaden rule of the *Leſbian Artificers*, which they might at pleaſure bend, and bow to every ſtone of whatſoever faſhion. And heereby it may alſo appeare, what uſe there ought to be aſwell of the *Poſitive* or written *Law*, as alſo of *Equity* it ſelfe: For ſeeing that the *Poſitive* and *Common Law* is made meet for the moſt part, and that *Equity* is added for helpe in ſome few or ſingular caſes, it followeth by reaſon,

ſon, that commonly and regularly the poſitive Law ſhould be put in uſe, and that *Equity* ſhould be appealed unto but onely in rare and extraordinary matters, leſt on the one ſide, if the *Judge* in *Equity* ſhould take *Juriſdiction* over all, it ſhould come to paſſe (as *Ariſtotle* ſaith) that a *Beaſt* ſhould beare the rule: For ſo hee calleth man, whoſe *Judgement*, if it be not reſtrained by the Chaine of *Law*, is commonly carried away with unruly affection: And on the other ſide, if onely ſtreight Law ſhould be adminiſtred, the helpe of *GOD* which ſpeaketh in that *Oracle* of *Equity*, ſhould be denied unto men that need it. And there-

fore

ſore even as two *Hearbs* being
n extremity of heate, or cold,
bee by themſelves ſo many
poiſons, and yet if they be
ſkilfully tempered, will make
a wholeſome *Medicine*: So al-
ſo would it come to paſſe, if
either this *Arithmeticall Go-*
vernment (as they call it) by
Rigour of *Law* onely, or this
Geometricall Judgement at the
pleaſure of the Chancellour
or Prætor onely ſhould be
admitted; and yet if they be
well compounded together,
a moſt ſweete and harmoni-
call *Juſtice* will follow of
them. A good Chancellour
will not then make this Pro-
clamation, *Nullus recedat a*
Cancellaria ſine remedio, and ſo

received knowledge of every complaint that ſhall be made before him upon whatſoever ſuggeſtion, and thereby both overthrow the authority of the Courts of *Common Law*, and alſo bring in upon men ſuch a confuſion and uncertainty, as hardly any man ſhall know how, or when he may hold his owne aſſured; but he will rather ſuffer the *Common Law* to have her iuſt honour, and not to be interrupted in her right courſe; and will yet withall provide that the gate of *Mercy* may be opened in all Calamity of Suite: to the end, (where neede ſhall be) the rigour of *Right* may be amended by the Iudgement of *Equity*. In which behalfe

behalfe this our Age hath greatly to thanke *God*, for that by the miniſtry of our gracious *queene Eliz.* he doth not onely leave unto us the right uſe of thoſe Courts of meere Law, but hath alſo hitherto placed in that *Pretoricall* Roome, or *Chancery*, men no leſſe learned in the *Common Lawes* of this Realme, then accompliſhed with the skill of this *Moderation* of *Equity*.

I ſee that occaſion is heere offered me, to enter into the handling of ſundry Queſtions concerning the Order of the *Chancery*, and chiefly of this one thing: Whether it be meete, that the *Chancellour* ſhould appoint unto himſelfe;

and publiſh to others any certaine *Rules* and *Limits* of *Equity*, or no; about the which men both godly and learned doe varie in opinion: For on the one part it is thought as hard a thing to preſcribe to *Equity* any certaine bounds, as it is to make any one generall Law to bee a meet meaſure of *Juſtice* in all particular caſes. And on the other ſide it is ſayd, that if it bee not knowne before hand in what caſes the Chancellour will reach forth his helpe, and where not, then neither ſhall the Subiect bee aſſured how, or when he may poſſeſſe his owne in peace, nor the practizer in Law be able

to

to informe his Client what may become of his Action: But becauſe this and the like matters be of more difficulty then that I may with modeſty take upon mee to determine them, and for that alſo it is not my preſent purpoſe to diſpute what is convenient to bee done in any Court, but rather to diſcourſe the beginning, and acknowledge the benefit of them all, I will onely wiſh theſe two things. Firſt, ſome good meanes were adviſed, whereby ſuitors in the *Chancery*, and ſuch like Courts, might before their day of hearing, which they purchaſe not without great expences, learne whether

they ſhall be diſmiſſed thence to the tryall of the *Common Lawes*, or no; which thing whether it might be better performed by ſuffering *Plea*, to the Iuriſdiction of the Court, or by ſummary conſideration of the caſe, collected out of the Bill and anſwer, or by a faithfull report of the eſtate of the matter, under the *Oath*, and at the perill of both parties; or by ſome other way, I will leave to the Iudgement of ſuch as have more *Wiſedome* to adviſe, and *Power* to execute.

Againe, when as the *Chancery*, or any ſuch Court ſhall be intituled to hold *Plea* of right of Land upon the ſuggeſtion of

of uncertaine *Charters* or *Evidences*, ſhould be brought into the Court, that the parties ſhould be diſmiſſed to the *Common Law*, or enter plead for the right in the Land, that thoſe Evidences alſo ſhould be ſent thither at the day of Tryall, to be given in Evidence, and that according to the right, ſhould fall out for the Land. So the *Charters* alſo ſhould be delivered to the one, or to the other of the parties: Whereas now it is often ſeene, that one man doth impleade another by this pretence in the Court of *Equity*, for cauſe that requireth no helpe of *Equity* at all, but doth moſt properly pertaine to the De-

terminations of the *Common Law*. But leaving to others the Consideration of this also, let me summe up the rest of your *Lay Courts*, and labour to make an end of them.

Court of *Starchamber*.

As in the government of all Common-weales, sundry things doe fall out both in Peace and Warre, that doe require an extraordinary helpe, and cannot awaite the usuall cure of common rule and setled *Justice*, the which is not performed, but altogether after one sort, and that not without delay of helpe, and dispense of time: So albeit heere within this Realme of *England*, the most part of

Causes

Cauſes in complaint are, and ought to bee referred to the ordinarie proceſſe and ſolemne handling of *Common-Law*, and ſingular Diſtribution of *Juſtice*, yet have there alwayes ariſen, and there will continually from time to time, grow ſome rare matters meete for iuſt reaſon to be reſerved to a higher hand, and to be left to the aide of abſolute power, and irregular authority.

The which thing that it may the more plainely appeare by particularity, it ſhall peradventure be worthy the labour to examine.

The three parts of this diſcourſe.

Firſt, for what ſort of offences the *ſuits* ought to be *commenſed*, then

then before whom they ought to be heard, and lastly, what speciall place hath beene the most usuall and frequented Court for the receiving of the same.

The first part of this Discourse.

Seeing that all Actions be either *Civill*, or *Criminall*, that is, either concerning *right* or *revenge*, and the *Common place* heareth the *Suits* of *civill Nature*, and the *Kings Bench* those things that doe concerne *Offences*: It might seeme that all manner of *Suits*, both *Common*, and of the *Crowne*, ought to be drawne in the one, or the other of the Courts, and that it should be in vaine to imagine upon any Iudgement place besides them.

But

But yet even as by the uſage of all *Lawes*, it is confeſſed, that in the neceſſity of *Civill Cauſes*, and Calamities of that kind, *recourſe* may be had to the *Prætor*, or *Chancellour*, for, and againſt the inflexible Rigour of the *Common Law*: So likewiſe it is to be granted, that whereſoever the ordinary *Courts* of *Juſtice* be hindred in their courſe and orderly proceeding, or where the *evill* and *crime* it ſelfe is either now in deviſe, for which no *Law* hath bin yet provided; or where the *Miſchiefe* doth ſurmount the common growth ſo farre, that ſtanding *Laws* hath no reach, nor condigne puniſhment to make it exemplary,

plary, there, and in ſuch caſes, *helpe* and *ſupply* muſt elſe where be ſought and found; or otherwiſe *Juſtice* muſt limpe on the better leg, and muſt let *offenders* to eſcape, and paſſe unpuniſhed. Now albeit theſe *offences* be variable, and infinite in their ſundry ſorts, according to the changeable and bottomleſſe devices and draughts of thoſe wicked *Artificers*, out of whoſe ſhops they be ſent; ſo as I may truely ſay with the *Poet*,

Non, mihi ſi linguæ centum, ſint oraq; centum,
Ferrea vox, omnes ſcelerum comprehendere formas,
Omnia pœnarum percurrere nomina poſſem.

Yet, to the end that they may in ſome open manner be deſected, I will endeavour to

containe them all within ſome of theſe generall bonds that doe enſue.

As all theſe exraordinary cauſes bee in their owne nature *Criminall*, and not *Civill*, ſo all theſe *Criminall* doe proceed either from fraud, or force, or from them both mixed together, and likewiſe they bee all committed, either by publicke, or private perſons, and ſomtimes againſt the one, & other, ſometimes againſt the other of them.

The ſundry ſorts of extraordinary *Criminall* cauſes.

By the miſdemeanours of publicke men & officers that are forged out of fraud, I mean the Corruptions of the *Judges* of any Courts of the *Juſtices* of *Peace*, and whatſoever

The offences of Publick perſons.

ſoever other Commiſſioners, or Delegates, that either for *Covetouſneſſe*, or through *Friendſhip*, or *Hatred* towards any of the parties, will dip their owne fingers in the Suits that depend before them, and will be ſeene more like to affectionate *Advocates* or *Parties*, then to ſincere and indifferent *Judges*, either racking Law too long, that it may over-reach the one ſide, or ſhrinking it too ſhort, that the benefit thereof ſhall not extend to the other ſide; or otherwiſe, indirectly abuſing the courſe of the *Courts*, or leaping the pale of *Integritie* and *Juſtice*, within the limits or bounds whereof they ought to

have

have and keepe them. And in this part, as ſome may ſlyly abuſe thoſe good gifts, in reſpect of which they are called to the *Magiſtracy*, ſo other ſome ſticke not to uſe meanes both forcible, and ſubtle, for the winning of their wills, thinking that for their apparant *Nobility*, ancient *Gentry*, large *Poſſeſſions*, overflowing *Riches*, or ſtore of *Friends*, ioyned with the roomes of high *Authority*, that they have above their *Neighbours*, no paſſage ought to be forecloſed againſt them, howſoever it lead both to the diſcredit of themſelves, and to the danger or undoing of other men.

Now, howſoever there be no ordi-

ordinary *medicine* of *Lawes* for infinite particular *Maladies*, that be cauſes of theſe evill humours, yet I doubt not, but that all *wiſe Men* will readily acknowledge, that there is not any one kind of *Example*, proceeding from any *Court* of ordinary reſort, that can be more fruitfull, or beneficiall to the *Common good*, then it ſhall be by ſome ſtately *Authority*, to checke the inſolencies and outrages, if any ſuch ſhal happen of the *Judges*, *Juſtices*, and other men that be great by their places, and *Authority*; for therby both themſelves may be either amended, or removed; their equalls ſhall be taught to beware, to take heed, and

their

their inferiours ſhall quake for feare, when ſeeing their betters condignely puniſhed, they can promiſe to themſelves no hope of eſcape, or impunity.

On the other ſide, the private and meaner ſort of men, wanting the furniture of *Authority*, and of ſundry other Advantages wherewith the great ones are apparrelled, do beate their braines for the finding out of ſhifts and ſubtilties, and doe for the moſt part lay Hookes, and make Traps as it were, for the taking, intangling, and ſnaring of ſilly and ſimple folks. The miſdemeanors of private men.

And hereof ſpring ſo many cunning Coſonages, crafty reaches, undermining devi-

ces, ſubtile complots, counterfeite drifts, and fraudulent fetches; the egges whereof be laid ſometimes by deſire of mony, and ſometime by thirſt of revenge, but bee alwaies, or for the moſt part hatched by *Periurie*, Bribery, and Corruption, and are wholly addreſſed to the diſcredit of the good name of ſome, to the detriment of others in their goods and fortunes, and to the great danger, & hazard of the body and life of many a man.

And heere againe it is not meet and iuſt, that when the wicked ſort of men have excogitated any thing with great Labour of wit and cunning ſo as it may ſeeme they have drawne

drawne a quintessence of mischiefe, and set the same abroach, to the remediless hurt of the good and quiet subiect; Is it not meet and iust (I say) that authority it selfe also, which is the ordinance of *God*, for the defence of the one, and punishment of the other, should straine the line of *Iustice* beyond the ordinary length & wonted measure, and thereby to take exquisit avengment upon them for it? yea is it not right necessary, that the most *godly*, *honourable*, *wise*, and learned persons of the Land, should be appealed unto, that they may apply new remedies for these new diseases, and that they may be prayed to whet, &

exercise the edge of their honorable authorities, excellent wisdomes, & gifts of the highest learning against such divelish impostors, mischievous deceivers, & most dangerous *Sycophants*: No lesse reason it is also, that all such good, and upright *Justices, Commissioners, officers*, & whatsoever publick persons, as without seeking any by-paths, or starting holes doe walke *Regia via* in their severall duties, And yet nevertheless bee assailed by the evill tongues oppugned by the iniurious wrenches, or discomforted by the unruly countenances of insolent men, should have some place whereunto in default of *Common* helpe

helpe they may fly for refuge as to a certaine *Sanctuary* and holy Anchor, and where they may ſhrowd themſelves in their innocencie, and finde the defence of their Authority at the hands of them, by whoſe gift, meanes, or Commendation they firſt received the ſame.

The apparant lacke of ordinary helpe.

But leſt it be ſaid unto me that theſe things bee not hid from the wiſedome of the ſtanding Law, which hath alſo opened remedie by way of ordinary iuriſdiction in whatſoever evills of theſe kindes, it ſhall bee meete for the more manifeſtation of that which I intend, to fall to ſome more ſpecially, & to exemplify

my whole conceite, by giving a taſte of all in theſe few heads of particular caſes.

1. If therefore ſuch a one as hath *Jura regalia*, will deny originall writs, or other meanes of *Juſtice*.

2. If one that hath a iudiciall place, ſhall by corruption miſlead the whole courſe of an *Evidence* given to a Iury that is charged before him, or ſhall pleaſingly heare the proofes of the one party, and peremptorily cut off the other, whereby the truth of controverſie is not brought to light.

3. If a good and ſerviceable *Judge*, *Juſtice*, or *Officer* ſhall be baited, & bitten with libells & ſlanders that be not actionable.

4. If

4. If a *Juſtice* of peace ſhall be contemptuouſly deſpiſed, and offered indignities, for which no private Action will bee maintained.

5. If one ſhall attempt to coyne money, and ſhall be deprehended in the doing thereof before he hath performed it.

6. If a Counſeller at the Law ſhall give advice ſtanding with Learning at Law, and yet tending onely to vexation, delay of Iuſtice, or deceit of private perſons, to the defrauding of the Queenes Maieſty in her lawfull *Prerogative*, or to the breaking of a good and wholeſome Statute-law.

7. If a man of behaviour and

countenance, ſhall ſecretly practiſe with others for the beating or murthering of any other perſon, and bringeth it not to effect.

8. If Citties, Townesships, Colledges, or other Corporations, ſhall wilfully wrangle, and factiouſly rent themſelves in ſunder, wherby their whole politique body ſhall be hindered, or otherwiſe become unprofitable; or ſhall cauſeleſly diſcountenance, or diſgrace any honeſt perſon of their *Company*.

9. If one private member of ſuch a body, ſhall by vexation in *Law* ſo unquiet the Head, and all the reſt of the Company, that they cannot apply their common calling.

10. If

10. If wilfull *periury* be committed by any perſon, in caſe where no *Indictment* lyeth, nor *Action* upon the *Statute* of *Periury* may be maintained.

11. If a man ſhould accuſe another to the Queenes Maieſty, for ſpeaking words againſt her, and cannot maintaine the accuſation.

12. If a man ſhall wilfully offend a *Proclamation* made by her *Maieſty* upon urgent cauſe for a time onely, and until that *Law* by *Parliament* may be provided.

13. If the *Jury*, or *Homage* in a Court Baron, will paſſe againſt plaine Evidence in a Plaint of *Ayell formidone*, or ſuch like.

14. If a *Grand Jurie* will againſt

gainſt their evidence finde *Ignoramus*, or a Iury for Life, or death will finde a hainous murtherer to be not guilty.

15. If an officer that ought to be ſworne will excerciſe his office without any oath taken by him.

16. If a lewd fellow ſhall counterfeit upon a *Writ* of *Covenant* the officers hands to deceive her *Maieſty* of her due fine, or the hand of her Atturney generall, for the better paſſing of a *Pardon*, or ſhall ſet the name of a *Councelour* to a bil in Chancery, without his privity and knowledge.

17. If one that is ſued upon a title of Leaſe for yeares be outlawed, and hath his pardon,

and

and yet will conceale his pardon, and cauſe his Chattels to to be ſeiſed for the Queene, and then procure them to bee committed to a friend of his.

18. If a couſening crew ſhall entice a yong man to the company of a woman, and cauſe him to bee deprehended by one that pretendeth to be her husband, & ſo for his redemption hee ſealeth leaſes of his Lands, and maketh giftes of his goods, if I ſay any of theſe, or the the like miſdemeanours whereof the number is infinite ſhall be committed, I ſee not how they may bee Chaſtiſed, by the rod of any ordinary authority, ſtanding Law, or ſtatute,

And

And therefore conſidering that they tend, though in diuers degrees to the diſhonour of God, the contempt of her royall *Maieſty*, the diſturbance of the *Comman* peace, and the diſherifon, danger, & death of good ſubiects, I ſupoſe that no man will be either ſo wicked as to affirme that they ought not to be puniſhed, or ſo unadviſed as to hold that the ancient and godly policy of this kingdome, and *Common wealth*, hath not left the means to bring them into iudgment: for howſoever the Nationall, civill, or poſitive Lawes of particular people & Countries which do work upon generalities, & muſt therfore faile in many ſpecialls,

doe

doe not provide punishment for all sorts of evills that may arise; yet may it not bee doubted, but that the *Justice* of God, whereof the Law of humanity, reason, and nature hath some remnants saved for us, from that great shipwrack of our first parent Adam, doth keepe correction in store for them.

The second part enquiring who is Judge of these Extraordinary *Criminalls*.

And therfore let us rather enquire who it is that both may & ought to award this correction & chastizment for the same.

I shall not neede to repeat that which I have before this time opened, touching the beginning of the Kingly power, & authority for the delivery of *Iustice*, to al the sorts, & in al the

suits

suits of his Subiects.

The King. But I will confirme by proofes drawne out of our Country *Lawes*, and *Lawyers*, that the selfe same generall Iurisdiction is appropriated to all the *Kings* of this Realme of *England*.

Mr. *Henry Bracton* that lived in the time of King *Henry* 3, hath in the *ninth* and *tenth Chapter* of his Booke, these words following, *Rex potestatem Juris, sicut Dei Vicarius, & Minister in terra. Sin Dominus Rex ad singulas causas determinandas non sufficiat, ut levior sit illi labor in plures personas, partito onere eligere debet viros sapientes, & timentes Deum, & ex illis constituere Justiciarios.*

The

The words doe proue two things ſerviceable for this purpoſe: Firſt, that the King ought onely to be the *Judge* of his people, if he alone were able to performe that office, as well becauſe he is within his owne kingdome the *Viceroy* of *God*, the ſupreame *Judge* of the world, as alſo for that hee is thereunto bounden by *Oath* taken at the Coronation; The ſecond, that albeit hee doe for the multitude of cauſes ſubſtitute others underneath him, yet is he not thereby diſcharged himſelfe; for it is done *ut levior ſit illi labor*, that his labour be the lighter; not that he ſhould ſit unoccupied; and leſt you ſhould doubt that ſo much

much is not compriſed in that *Oath* of his, one *queſtion* therein amongſt others is this, *Facere fieri in omnibus Judicijs tuis æquam, & rectam Juſtitiam, & diſcretionem in miſericordia & veritate ſecundum vires tuas?* to the which hee anſwereth *faciam*: wherein the words *Judicijs tuis, & vires tuas*, doe more properly denote unto us his owne doing, then the doing of his ſubalterne *Juſtices*, albeit their *Judgement* bee after a certaine manner the *Judgement* of the King himſelfe alſo, from whence their Authority is derived; much like the words of *Bracton* ſpeaketh King *Edward* 1. in the beginning of his Bookes of *Lawes*, commonly

called

called *Britton*: where after he had ſhewed that he is the *Vicar* of *God*, and that he hath diſtributed his Charge into ſundry portions, becauſe he alone is not ſufficient to heare, and determine all complaints of his people, then he addeth theſe words, *Nous volons qwd noſtre Juriſdiction ſoit ſur touts Juriſdictions en noſtre Realme, Iſſintq; en touts maners de Felonies, Treſpas, Contracts, & en touts maners de autres actions perſonals, ou real agons poer avendre, & faire rendre les iudyments tiels come ils afferont ſauns auter proceſſe, par la ou nous ſa vous la droyt veritu come Juges.*: We will, ſaith the King, that our owne *Juriſdiction* be above all the *Juriſdiction* of our

Realme: ſo as in al manner of ſe-*lonies*, *treſpaſſes*, *contracts*, and in all other *Actions* perſonalls or reals, we have power to yeeld, or cauſe to yeeld ſuch *Judgements* as doe appertaine without other proceſſe, whereſoever we know the right truth as *Judges*: Neither may this be taken to be in part of the *Kings Bench*, where there is onely an imaginary preſence of his perſon: but it muſt neceſſarily be underſtood of a *Juriſdiction* remaining, and left in the *Kings* Royall Body or Breaſt, diſtinct from that of his *Bench*, *Marſhalſey*, *Common Pleas*, *Exchecquer*, and the other ordinary Courts; becauſe he doth immediately after

fter in the ſame place, ſeveral-
y ſet forth by themſelves, aſ-
well the authority of the *Kings*
Bench, as of the reſt of thoſe
his ordinary Courts of *Juſtice*.

And that this was no new
made *Law*, or firſt brought in
by the *Norman Conqueſt*; I muſt
put you in mind of that which
I have vouched before, out of
the *Saxon Lawes* of King *Edgar*;
where you did read it thus,
Nemo in lite Regem appellato, ni-
ſi quando domi iur conſequi non po-
terit, ſin iuris ſummi onere domi
prematur, ad Regem ut is id oneris
allevet provocato: Let no man in
Suite appeale to the King, un-
leſſe he may not get right at
home; but if that right bee
too heavy for him, goe to

the King to have it eaſed : by which it may evidently appeare, that even ſo many hundred yeares agoe there might Appellation be made to the *Kings* perſon, whenſoever the *Kings* cauſe ſhould enforce it.

The Kings Councell.

But now although I ſpeake here expreſſely of the *Kings* perſon, yet I meane not ſo preciſely, as though that either the *King* ought to performe theſe Iudgements in his owne perſon alone, or that hee muſt of neceſſity be preſent in perſon, whenſoever others ſhall accompliſh them on his behalfe.

Onely I doe affirme, that the *King* hath a ſupreme Court of *Prerogative*, whereunto his Subiects in ſuch their neceſ-

ſities

ſities may provoke, as to his owne *Royall perſon*; and wherein there is place left for him to ſit, the which our *Kings* in perſon have oftentimes frequented, & were aſſiſted with ſuch men of *nobility*, *wiſedome*, and *learning*, as he ſhal chuſe, he may in *Royal preſence* uſe his iudiciall *authority*, or may otherwiſe for the time abſtain to be *preſent* there, and leave the proceedings to thoſe ſetled men: but yet ſo, as both he *ſuits* be exhibited to *himſelfe* by *name*, and that he alſo receive *intelligence* thereof when it ſhal be requiſite: and theſe men thus taken for their *counſel* & *advice* we do cõmonly cal *the Kings councel*, which *words* foraſmuch as it is diverſly uſed

in our *Law*, and doth not alwayes import the ſame thing, it ſhall bee fit in ſome few words to diſtinguiſh the ſignifications, and ſorts thereof.

The generall Aſſembly in *Parliament*, is termed in our old Writs, *Commune Conſilium Regni Angliæ*, the Common Councell of the Realme of *England*, called together by the King, for advice in matters concerning the whole Realme: of which Aſſembly ſome be *Councellours* by Birth, as the *Barons*; ſome by Succeſſion, as the *Biſhops*; and ſome by Election, as *Knights* and *Burgheſſes*; and theſe bee all (for the time) the Kings Councell. The *Maſters* of the *Requeſts* alſo,

alſo, which doe hold Plea of *Complaints* exhibited for *Equity* to his owne perſon, be according to the uſuall forme of writing there, named the *Kings Councell*: And beſides both theſe, there is another *Councell* of the *King*, whereof there is mention made by name, both in the Statute 37. *Edw. 3. Cap.* 18. which I reſerve to be hereafter recited for another purpoſe, and likewiſe in one agreement of an Exchange, had for the Caſtle of *Berwicke*, betweene King *Henry* 4, in the firſt yeare of his Reigne, and the Earle of *Northumberland*, where the King promiſeth to deliver to the Earle Lands and Tenements to the value of

the Caſtle by theſe words, *Per eviſs & aſſent des Eſtates de ſon Royalme, & de ſon perlement pareuſt que perlement ſoit devant le Feaſt dan St. Lucy, ou autrement per aſſent de ſon grand Counſeil, & autres Eſtates de ſon Realme, que le Roy ferra aſſembler devant le dit Feaſt en caſe quod le parlement ne ſoit, &c.* And this by the advice, and aſſent of the Eſtates of his Realme, and of his Parliament: ſo that the Parliament happen before the Feaſt of St. *Lucy*; otherwiſe by the aſſent of his *Great Councell*, and other Eſtates of his ſaid Realme, which the King will cauſe to be aſſembled before the ſaid Feaſt, in caſe the Parliament doe not

happen,

happen, &c. as in the inſtrument therof, Dated at *Litchfield* 27. of *Aug.* in that *yeare*, and remaining in the *Tower* may be read. By which words it is plaine, that there is a *Great Councell* beſides the *Parliament*, which no doubt, is the ſame wherof the *Statute* made afterwards in the 13. *yeare* of the ſame King *Henry* 4. *chap.* 7. againſt *Riots*, doth ſpecially ſpeake, cõmanding, that where the truth of a *Riot* may not be found by the enquiry of twelve men, there the *Juſtices* of the *Peace*, and *Sheriffe*, or *Under-ſheriffe* ſhall certifie before the King and his Councell all the deeds & circumſtances therof: which ſpeech cannot be meant,

either

either of the *Chancery*, or of the *Kings Bench*, becauſe the latter is diſtinguiſhed from it by expreſſe words of the ſame Statute, and the former was afterward 8. *Henry* 6. *Cap.* 14. enabled to receive Certificats of this kinde, by the Letters of the ſame *Juſtices* and *Sheriffe*, or *Under-ſheriffe*.

This *Councell* of the King, conſiſteth onely of perſons thereunto eſpecially elected by *himſelfe*, and thereunto ſworne to ſerve him with their faithfull advice and counſell; and whether they be *Nobles*, or no, it is not materiall, ſeeing that the Calling commeth not by *Birth*, but groweth by *Election*; ſo as it excludeth all

that

that be not admitted: A thing that may well appeare, not onely by the ſpeciall forme of their *Oath*, by the number of themſelves diſtinctly knowne to be more or leſſe at ſundry times, by keeping in Record the entry of their ſeverall *Names*, and by the *Fee* that each of them doth rightly pay after his degree when hee is admitted; but alſo by experience of former times, and not without example of Execution in our owne Age: And they alſo of this Councell of the King, have beene diverſly termed, more inwardly and ſecretly uſed in matters of Eſtate: Beſides, that they were ordinarily imployed alſo upon other

cauſes

cauſes with the reſt that have beene called of Councell at large.

For where it is reported in *Dorſo clauſo de Anno* 16. *Edw.* 2. *Membr.* 5. That *Henry* the *Lord Beaumont* was for his unreverent ſpeeches to the *King*, commanded out of the *Councell-houſe*, it is there ſaid withall, that he was *Juratus de magno & ſecreto Conſilio Regis*, howbeit they both are for this our purpoſe: That *great Councell* of the *King* whereof I ſpeake even now, and be ſo incorporate with him, as he ſpeaketh by thé, and their *Judgments* are reputed to be his own: To which I may the more boldly affirme, when I read 2. *Rich.* 3. 11, & 18. *Hen.* 8. 1, that

Fynes

Fynes aſſeſſed by the *Kings Juſtices* of any *Court*, are to be underſtood to be *Fynes*, adiudged by the *King himſelfe*; and thus have I both *ſhewed*, and *confirmed* who it is that ought to hearken to the *complaints*. But here have I mighty adverſaries to encounter withal, the which maintaining with their whole forces the ordinary Iuriſdiction, will in no wiſe yeeld to any ſuch abſolute and unbridled authority, as I may ſeeme to advance. And therefore firſt of all that great Charter of the liberties of *England*, which I may call the firſt *Letters* of *Manumiſſion* of the people of this *Realme*, out of the *Norman ſervitude*, doth by the *mouth* of the *King* among other

The conflicts betweene the *Law abſolute* and *ordinary*.

other Freedomes ſpecifie this one, *Nullus liber homo capiatur, vel impriſonetur, aut diſeiſietur de libero tenemento ſuo, vel libertatibus, vel liberis conſuetudinibus ſuis, aut utlagetur, ut exulet, aut aliquo modo deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale iudicium parium ſuorum, vel per legem terræ.* By pretence of which *Grant*, the common Subiect thought himſelfe free from that irregular power, which the former Kings and their Counceil of Eſtate had exerciſed upon him, and phantaſied, that he ought not henceforth to be drawne to anſwer in any caſe, except it were by way of *Indictment*, or by tryall of good and lawfull

full men, being his Peeres onely after the course of the *Common Law*: whereas indeede these words of the Statute ought to be understood of the restitution then made, of the ordinary *Jurisdiction* in common controversies, and not for restraint of the absolute authority; serving onely in a few rare and singular cases: and therefore see what followed, some cases daily creeping out of Suits, for which no *Law* had beene provided; and some misdemeanours also happening from time to time in the distribution of those *Lawes* that were already established. It came to passe, that many finding none other helpes for the

the griefe, were enforced to ſue to the Kings perſon it ſelfe for remedy: and he againe, knowing himſelfe to be the *Chiefe Juſtice*, and *Lieutenant* of *God* within his owne Realme, thought himſelfe bound to deliver *Judgement* and *Juſtice*, whenſoever it ſhould be required at his hands. The which foraſmuch as hee could not evenly and with uprightneſſe performe, unleſſe hee called the adverſary party; neither had he many times, eſpecially in a new and ſuddaine occurrent, any ordinarie Writ or Proceſſe, whereby to call him of neceſſity; he was to reſort to the kingly and abſolute power againe, and by his

Purſe-

Purſevant or Letters, to convent him, and then to proceede to the hearing, and detetmining of the cauſe, as to his *Princely office* did appertaine.

The which thing was ſo farre from offending the Subiect for a long time together, that in the Parliament 28. *Edw.* 1. *cap.* 5. the Commons aſſented to an Act, by which it was provided, that the *Chancellour* and the *Juſtices* of the *Kings Bench* ſhould follow the *King* whereſoever he went, to the end that he might alwayes have at hand men learned, and able to adviſe him in ſuch caſes as he admitted to the hearing.

Nevertheleſſe, ſuch is the

weakneſſe and imperfection of man, the time was not long but the ſubiect which ſo deſirouſly fled to the King and his Councell for ſuccour, did as haſtily retire, and runne backe to the ordinary Seat and *Judge* againe.

The which thing whether it happened by the chargeable and hard acceſſe to the perſon of the *King*, who could not but be many wayes buſied with more important matters, or by ſome delay of *Juſtice* that that fell in his abſence out of the *Realme*, by occaſion of forraigne *Warres*, and other affaires; or by the undertaking of Cauſes without the advice and preſence of the ſaid Councellours

cellours and Iuſtices. It needeth not any long and curious inquiſition : but this is certaine, that within five yeares, next after the beginning of the Reigne of King *Edward* 3, it was commanded by *Parliament*, that the forme of the great *Charter* in this point, ſhould be wholly and inviolably obſerved, and for the more aſſured ſuppreſſion of all attempts that might breake forth to the contrary, it was afterwards by the *Parliaments* 25. *Edward* 4. *cap.* 4. 28. *Edw.* 3. *cap.* 31. provided and prohibited, that no man ſhould be put to anſwere before the *King*, or his *Councell*, without preſentment before the *Juſti-*

ces, due Proceſſe, matter of Record, and Writ originall, according to the ancient *Lawes* of the Land.

Moreover, for the utter diſcouragement & beating downe of all ſuch as uſed to preferre unto the *King* any accuſations, ſuggeſtions, or petitions againſt other men, further *Law* was given by the *Parliament*, 37 *Edw.* 3. *cap.* 18. that they ſhould be ſent with their ſuggeſtions before the *Chancellour*, *Treaſurer*, and the *Kings great Councell*, and ſhould put in ſuerties of *Taliation*, that is, to incurre the ſame paine that the other ſhould have, in caſe the ſuggeſtion were found untrue. But one yeares experience made that

point

point to be mollified, by the making of a new *Law*: 38. *Ed.* 3. *cap.* 9. which taking away the *Taliation*, gave order that ſuch falſe ſuggeſtors ſhould be impriſoned, onely untill they had both made full agreement with the party moleſted, and Fyne and Ranſome with the *King*: and then within a few yeares after alſo theſe accuſations grew ſtill more and more odious: So that it was decreed by the *Parliament*, 42. *Edw.* 3. *cap.* 3. that if any ſhould bee done in that behalfe contrary to the old *Law* of the Land, the ſame ſhould be void in the *Law*, and holden for errour. Neverthelеſſe, theſe *Complaints* were yet againe afterwards

thought meet to be admitted; and thereupon the *Statute* 17 *Rich.* 2. *cap.* 6. willed the *Chancellour* alone ſhould have power by his diſcretion to award damages againſt any perſon that ſhould make untrue ſuggeſtion againſt another before the *Kings Councell*: The which Authority the *Chancellour* exerciſed many yeares together, and untill at the length his *Writs* of *Subpœna* flew ſo thicke abroad for matters determinable at the *Common Law*, that he alſo was charged not to exceede the bounds of *Authority* delivered unto him: ſo that the *Parliament* 15. *Hen.* 6. *cap.* 4. ſtayed the granting of the *Subpœna*, untill that ſuerty were found

to anſwer to the party grieved, aſwell his damages as expences, if that the matter ſhould not be made good, that was contained in the Bill of Complaint againſt him. Now by the toſſing of this Ball to and fro, betweene the *Councell* and *Commons*, it may at once very well appeare on the one ſide how hard, and rare a thing it is, for great men arrayed with high *Authority*, to containe themſelves within the prefixed limits and pale of their power, and on the other ſide, how impatient the *Common man* of this *Realme* hath alwaies bin, and without doubt yet is, and ever will be, to have his Cauſes determined either at the *Coun-*

cell-board without open hearing, or by abſolute authority, without preſcribed rule of ordinary proceeding; in either of which caſes he is very ielous of evill weight, and hard meaſure in the former, becauſe he is perſwaded, that as his *controverſie* is not at the firſt drawn from the ordinary tryall without the ſpeciall labour of the *adverſary*, and for great favour extended to him: ſo he feareth that the ſame *good-will* being once planted, will continually poſſeſſe the roome, and wil proove prejudiciall for him even to the end of his Suit and buſineſſe in the latter: becauſe, when he is to be iudged by an irregular and uncontroulable *authority*, he findeth

findeth himselfe utterly destitute of all *counsell* which way to turne him, since no man of *learning* can assure him before hand what will be the *consciences* or *discretion* of the *Judges*: whereas the successe may easily be foretold in most of these other *controversies* which come to *determination* by *ruled Law* and *bounded Jurisdiction*. And thus whilest the *King* and his *Councell* embraced all manner of Complaints without exception, the Subiects were thereby many times iniuriously vexed, and put to travaile and charge: So as this repugnancy tooke roote betweene them, and the *Antinomia* or *Contrariety* of *Law* did spring out of the

It is the Office of the King to deliver *Justice*.

the ſame: The which howſoe-
ver in appearance it may ſeeme
great and irreconciliable, yet
if recourſe may be had to that
golden Mediocrity, which both
Religion, *Reaſon*, and *Law* doe
maintaine in this point, the
Controverſie will ſoone be de-
cided, and that without any
derogating from the *Authority*
of the *King* and his *Councell*; or
preiudicating that lawfull *free-*
dome of the Subiect, which is
claimed for him. For as it is
inſeparably annexed to the *Of-*
fice of a *King*, to be the *Judge*
of his people, and he cannot
any longer remaine *King* in-
deed, then he ſhall be ready to
deliver *Judgement* and *Juſtice*
unto them, which two things

Bracton

Bracton saith, *Faciunt ipsam Coronam, nec ab ea separari possint*: So howsoever many Courts of ordinary resort shall be established by him, yet if either they have not, as I said, *authority* to apply Remedy for all wrongs and diseases, or that *power* and *authority* which they have, may not enioy her free course and passage, then must the King either exercise his *preeminent* and *royall Jurisdiction*, or else must the iniuriously afflicted be deprived of that helpe and remedy, which both the *Ordinance* of *God*, the *Duty* of a *kingly Judge*, and the *common Law* of *Nature* and *Reason* doe afford unto him.

And on the other side againe,

it

it is not to be doubted, if the Subiect were once utterly barred of this acceſſe to the perſon of the King in caſe of ſuch his diſtreſſe, he would cry out upon the ordinary Law, for the Authority whereof he ſo eagerly ſtriveth, and would not ſticke to lay to the Kings charge, that he bare the *Sword* in vaine, that hee kept not the promiſe of the great *Charter*, *Nulli negabimus aut differemus Juſtitiam*, and that he violated the *ſolemne Oath* and *vow* of his Coronation, *faciam fieri iuſtitiam*, what is then to be ſaid? Shall the *King* and his *Councell* open a Court for all ſorts of Pleas that be determinable by the courſe of *Common Law*? that

The true moderation of the *Juriſdiction* abſolute.

were

were to ſet an *Anomy*, and to bring diſorder, doubt, and incertainty over all: Shall no helpe at all be ſought for at the hands of the *KING*, when it cannot bee found in the *Common Law*? that were to ſtop his eares at the crie of the oppreſſed, and would draw wrath and puniſhment from *Heaven*. Betweene theſe two extreames *Medio tutiſſimus ibis*, there lieth a meane that will both uphold the *Maieſtie* of the *King*, maintaine the Authority of the *Common Courts*, and ſuccour the diſtreſſed Client in his greateſt neceſſity.

The which to deliver it ſhortly is this: if the ordinary Iuriſdiction

riſdiction of the *common Court* be not hindred by this infinite authority, but onely where either (as I ſaid) they have no Warrant to receive the *Plea*, or where the Tenure of their due proceedings is diſturbed, or where the matter is ſuch, as deſerveth to be heard upon the higheſt Stage, or the party ſuch, as is unable to runne the wearisome Race of *ſolemne Law* and *Proceſſe*, or where ſome other rare, extraordinary, and weighty conſideration ſhall promote the ſame.

The maintenance of this *mediocrity*.

And this *Mediocrity* is maintaineable, not onely by reaſon of the kingly and iudiciall *office* whereof I have ſometimes ſpoken, but alſo by the meaning

ning of many *Statutes*, and by the continuall practice of our owne Kings.

For whereas the *Statute* 27. *Edw.* 3. *cap.* 13. did provide, that if any Merchant were robbed at the Sea of his goods, and the ſame came to the hands of any perſon within the *Realme*, the Merchant ſhould be received, to prove the goods to be his owne, either by the *marke*, *Chartre party*, or *Cocket*, or by the teſtimony of good Merchants; and thereupon they ſhould be delivered unto him without any Suite at the *Common Law*. It was conſtrued, that the Remedy in ſuch a caſe was to be had at the hands of the King.

And

And therefore *Richard* 3. in the 2. yeare of his Reigne, ſate in perſon with the Councell, and heard the cauſe of a *Spaniſh* Merchant, that ſued before him upon the ſame *Statute*, and in that *Statute*, 13. *Henry* 4. *cap.* 7. 9. *Henry* 7. *cap.* 13. 31. *Hen.* 6. *cap.* 2. and others doe uſe mention of the King, and his Councell: it is not to be wreſted, as though they thea erected any new authority, but onely had regard to that which was before.

Againe, in that the Commons of the Realme aſſented firſt in the *Parliament*, 28. *Edw.* 1. *cap.* 5. that the *Chancellour* and *chiefe Juſtices* ſhould attend the King with their advice

vice upon theſe Complaints: then in the *Parliament* 37. *Ed.* 3. *cap.* 18. that theſe petitioners ſhould put in Sureties of *Taliation*. After that in the *Parliament* 38. *Edward* 3. *cap.* 9. that they ſhould be impriſoned till they ſatisfied the King, and the party of their falſe ſuggeſtions: And laſtly, in the *Parliament* 17. *Rich.* 2. *cap.* 6. that *damages* onely ſhould be awarded againſt them.

It is in all theſe I ſay, covertly confeſſed, that Complaints upon iuſt cauſes might be moved, before the *King* and his *Councell*, and that the Commons of the *Realme* ſought only to be delivered from *troubles* and *coſts* that grew by *iniuſt accuſations*:

ſations; which alſo is made plaine in that petition of the *Commons* of *Parliament* 1. *Henry* 6. *membr.* 4. in the Records, where they prayed that none ſhould be called before the *Chancellour*, or the *Kings Councell* for any matter; but ſuch onely as had no remedy at the *Common Law*, and in ſuch caſe alſo by the teſtimony of an *Indenture* to bee made betweene the Plaintiffes and two of the *Judges* of either *Bench*: And albeit the *Commons* have ſeemed in ſome other *Parliaments* generally, and without any exception, to impugne this kingly Prerogative, yet have the Kings alwayes moſt gravely and conſiderately repelled that

ſort

ſort of attempt, as when in the *Parliament* begun at *Glaceſter*, 2. *Richard* 2. the Commons made a ſupplication to the King, that no Writ out of the Chancery, or Letter of Privy Seale, might be directed to make any appeare before the *Kings Councell*, or others; to anſwer touching his Free-hold, but that the *Common Law* of the Land be maintained to have her full courſe.

The King then anſwered, that he thought it not reaſonable, that he ſhould be reſtrained to ſend for his Leiges upon cauſe reaſonable: And albeit he did not purpoſe, that ſuch as were ſo ſent for, ſhould anſwer Finalment peremptorily touching

ching their Free-hold, but ſhould be demanded for tryall thereof as *Law* required it: *Purvie touts voys quod a ſuits de partie, ou le Roy & ſon Counceil ſerront creablement enformes, quod pur maintenances, oppreſsions, & autres outrages daſcun en pais le common ley ne purra avoyer duement ſon courſe, quod en tiel caſe le Counceile purra envior pur le perſon, pur luy metre a reſponſe de la miſpriſion: et alour bon diſcretion de luy Compeller a faire ſuertie perſerement & in autre maner de ſon bon part, & que ill in ferra maintenance ne autre riens que purra diſturber le courſe del common ley in oppreſſion du people*: Provided alwayes ſaith he, that at the Suite of the partie where the King and his

his Councell ſhall bee credibly informed, that becauſe of maintenances, oppreſſions, or other outrages of any perſons in the Countrey, the *Common Law* cannot have her courſe, in ſuch caſe the Councell may ſend for the party upon whom the Complaint is made, to make his anſwer for his contempt, and furthermore, by their good diſcretion to compell him to find ſuerties by *oath*, or in other manner for his good behaviour, and that he ſhal not by himſelfe, or by any other commit maintenance, or other thing which may diſturbe the courſe of the *Common Law*.

And likewiſe when as the *Commons* in the *Parliament* holden

at *Westminster* in the 13. yeere of the same King, did pray that upon paine of forfeiture, the Chancellour and Councell of the King should not after the end of the *Parliament*, make any Ordinance against the *Common Law*, or the ancient *customes*, or *Statutes* of the Land; nor make any Writ called *Quibusdam certis de causis*, for the answering in any sort where Recovery is given by the *Common Law*, but that the *Common Law* should run wholly amongst all the people, and that no *Judgment* given, should be adnulled without due processe of the *Law*. The King then answered thus, *Soit use come ad estre use de-pant ses heures issuit, que la reale*

da roy ſoit ſanve, Car le roy voit ſa-ver ſa Regalie come ſes progenitors out fayt: devant luy : & ſi aſcun ſoylent grevde, monſtre en ſpeciall, & droyt luy ſerra fait : Let it be uſed ſaith the *King* as it hath beene uſed before this time, ſo as the Regality of the King be ſaved : for the King will ſave his Regality as his Progenitors have done : and if any perſon doe finde himſelfe grieved, let him ſhew it in ſpecialty, and right ſhall be done unto him. Moreover, where in the *Parliament* holden the 4 yeare of King *Henry* 4. the Commons complained, that notwithſtanding the ſaid *Statute* 25. *Edw.* 3. *cap.* 3. many of the Kings Leige people were unquieted, ſome

by Writs of *Subpœna* iſſuing upon falſe ſuggeſtions out of the *Chancery*, ſome by that Writ out of the *Exchecquer*, called *quia datum eſt nobis intelligi*, and ſome by Letters of privie Seale: and therefore prayed the King, that the party accuſed might be received to travers ſuch ſurmiſes, and to try them by an *enqueſt*; which alſo if they found for him, might give him damages in regard of the *ſlaunder*, *coſts*, and *travaile*, and that the accuſer ſhould not onely make fyne and ranſome to the King, but alſo endure impriſonment by the ſpace of a yeare. The Kings Anſwer then was, that he would give in charge to his Officers, that

that they ſhould abſtaine more then before time they had, to ſend for his Subiects in that manner: But yet ſaith he, it is not our intention that our Officers ſhall ſo abſtaine, that they may not ſend for our Subiects in matters and cauſes neceſſary, as it hath beene uſed in the time of our Progenitors.

Finally, when as in the *Parliament* 3. *Hen.* 5. the Commons ofttoones complaining againſt the Writs of *Subpœna* and *Quibuſdam certis de cauſis*, and *Quia datum eſt nobis intelligi*, which iſſued of matters determinable at at the *common Law*, and that were as they ſaid, firſt deviſed in the time of K. *Ri.* 2. by the *ſubſtitute* of *Joh. Waltham* the *Biſhop* of *Salisbury*,

lisbury, and therfore prayed the King that it might be enacted, that thoſe Writs ſhould be enrolled in the Courts from whence they proceeded, and thereby made open to the Defendant, that he might thereupon have his Action of Debt for 40. *pound* againſt him that ſhould purſue any ſuch: The *anſwere* was, *Le Roy ſa adviſera*, The King will be adviſed of it: The which is the ſame phraſe whereby the Kings of this Realme doe uſe to deny their aſſent to any Act that hath paſſed the Lords and Commons in *Parliament*.

All which *eſcripts* and *anſwers* of the Kings, doe fully diſcloſe that *Moderation* which

I ſeeke, that is, that the courſe of the *Common Law* be commonly holden, that men bee not cauſeleſly convented before the King and his Councell, and that the proceeding at the *Councell-board* be not upon every light ſuggeſtion, nor to determine finally concerning *freehold* or *inheritance*.

And yet that upon cauſe reaſonable, upon credible information, and that in matters neceſſary the Kings Regality prerogative, or iudiciall power in ſending for his *Subiects*, be maintained, as of right it ought, and before hath beene uſed. The which thing as you ſee, is ſo farre from impeaching the free courſe of the *Common-Law*,

Law that it not only concurreth with her, and remooveth all impediments of her proceeding, where ſhe hath the iuriſdiction: But alſo by the plenitude of the royall power, ſupplyeth her wants, and defects whereſoever ſhee is not authorized to deliver the helpe of *Juſtice*.

Examples of *Moderation.*

According to this moderation King *Ed.* 1. ſeeing that *Bogo de clare* was diſcharged of an accuſation put againſt him in *Parliament*, for ſome imperfections of forme that were diſcovered in the complaint, commanded him nevertheleſſe to appeare before himſelfe, *ad faciendum et recipiendum quod per regem et eius conſilium fuerit faciendum*,

dum, and ſo proceed by Reexamination of the whole cauſe *Anno* 18. *Ed.* 1.

And according to this *Moderation*, King *Ed.* 3. in the fourth yeare of his raigne, at the complaint of *Elizabeth* the widdow of *Nicholas Audley* to appeare before him ſelfe and his *Councel*, (*viz.*) the *Chancelour*, *Treaſurer*, and *Juſtices*, and other *Sages*, and upon their ſubmiſsion to ſtand to the ordinance of him, and his *Counſell*, he determined a controverſie betweene him, touching the aſſurance of certaine Lands contained in the Covenants of her marriage. *Rot. clauſo de Anno.* 41. *Ed.* the third.

According to this *Moderation*

tion King *Henry* 5. in a Suite before him and his Councell, betweene *William Goddard* and his Wife complainants againſt *Hugh Straule* for the title of the Mannor of *Serie*, and St. *Laurence* in the Iſle of *Tannet* in *Kent*; tooke order for ſequeſtring the profits till the right were tryed, aſwell for the avoiding of the breach of the peace, as for the prevention of waſte and ſpoile. *Rotl. Paten. Anno 6. Hen. 6.*

According to this moderation when *Robert Davers* a Councellour at the *Law*, had exhibited his Bill to King *Hen. 6.* and his Councell, in the 11. yeare of his Reigne, praying thereby, that foraſmuch as he

was

was defamed with the ſuſpici-
on of raiſing a Record of an *In-*
quiſition after the Death of *John*
St. *John*, the matter might be
examined aſwell for the be-
halfe of the King, as for the
declaration of his owne inno-
cency. The requeſt was gran-
ted unto him, and upon proofe
that *William Brocket*, a Clarke
of the *Exchecquer*, had made
the razure, *Brocket* was fore-
iudged to have acceſſe for wri-
ting in any of the *Kings* Courts
of Record, and *Davers* was
acquitted of all fault, with or-
der that his Declaration of his
innocency ſhould be inrolled.

The like whereof for the
Declaration of the innocency
to the Lord *Raph Cromwell*,
Cham-

Chamberlaine to the ſame King, made by him before the Kings *Councell*, againſt the villanous accuſation of one *Robert Colliſon* Preiſt, for ſuſpicion of Treaſon, may you read in *Rot. Paten. de Anno* 31. *Hen.* 6.

According to the ſame moderation, alſo the *Counſell* of the ſame King proceeded againſt *John Foard* a *Mercer* of London; and puniſhed him for his fraudulent packing of 26. ſtone of Wooll amongſt certaine broad cloathes that he ſold to a *Dutchman*, which did tranſport them, *Rotulo claus de Anno.* 17. *Hen.* 6.

According to this *Moderation* the ſame King likewiſe commanded the *Juſtices* of his

Bench

Bench to ſtay the arraignment of one *Verney* of London, till they had other Commandment from him and his *Counſell*: Becauſe *Verney* being indebted to the King, and others, practiſed to bee indicted of Felony, wherein hee might have his *Clergie*, and make his purgation, of intent to defraud his Creditors, 34. *Henry*. 6. *Rotulo*. 37. *in banco Regis*.

According to this *Moderation* King *Ed*. 4. and his *Counſell*, heard the cauſe of the Maſter, and poore brethren of the Hoſpitall of Saint *Leonards* in *Yorke*, complaining that Sir *Hugh Haſtings*, *John Wombell* &others, withdrew from them a great part of their living,

A thrave hath 24. ſheaves, as a ſtack hath 12.

which conſiſted chiefly upon having of a thrave of Corne of each Plowland, within the Countiees of *Yorke*, *Weſtmerland*, *Cumberland*, and *Lancaſhire*; and for the which they being very poore men, were not able to ſue the redreſſe at the *Common* Law, *Rot. paten. de Anno*, 8. *Ed.* 4. *part* 3. *memb.* 14. and yet had they of that Hoſpitall a ſpeciall act of Parliament made for them, to give them Action in that very caſe. 2. *Hen* 6. *cap* 2.

According to the ſame *Moderation*, the ſame King and his *Counſell*, made a decree for *Richard* the *Abbot* of Saint *Edmonds Bury*, againſt *Walter Thurſton*, *William Sigo*, and others

others, the inhabitants of *Bury*, whom he there punished, for turbulent elections of their *Aldermen*, *Constables*, and other *Officers*; whereas they had no Corporation at all, nor any other Head besides the Abbot. *Rot. Paten. Anno* 20. *Edward* 4. *Part* 2.

According to the same moderation, King *Hen.* 7. and his Councell in the first yere of his Reigne, heard the cause of *Sanctuary* at *Culvam*, claimed for Treason by *Humphrey Stafford*, under colour of the Priviledges of the Abbey of *Abbington*, and gave order that the *Judges* should deliberate thereupon, that *Stafford* with his learned Councell should bee

heard before them, and that the Abbot ſhould be called to ſhew his Priviledges. In which yeare alſo a Privy Seale was awarded to the Maior of Briſtow, *Ad faciendam Juſtitiam* to *Ferdinando de Saint Jago*, a *Spaniard*; or otherwiſe, to appeare *coram Rege*. And likewiſe the ſame yeare the Kings Councell decreed, that *Margery* and *Florence Becket* ſhould ſue no further in their Cauſe againſt *Alice Radley* Widdow, for lands in *Wolwich* and *Plumſtead*, for ſo much as the matter had bin heard firſt before the Councell of King *Edw.* 4. After that, before the Preſident of the *Requeſts* of that King *Hen.* 7. and then laſtly, before the Coun-

Preſident of the Requeſts.

cell

cell of the ſame King.

And to conclude I have ſeene it regiſtred, that the ſame *King Hen.* 7. did perſonally ſit in Iudgement with his *Councell* in the *Starchamber*, twelve ſeverall times within the compaſſe of that firſt and ſecond yeare of his Reigne : where according to his moderation the plaintife was commonly bound either alone, or with Sureties, to iuſtifie the matter of Complaint, or otherwiſe, to pay Coſts and Expences of the Defendant, and in default of ſuch proofe was many times committed to priſon for his wrongful vexation. The *Defendant* likewiſe moſt commonly gave *Bond* for the peace, or for

the good abearing, as the caſe required, to prevent all danger of force, and diſturbance of the *Common Law*, whereunto for tryall they both were oftentimes diſmiſſed. But amongſt other things which it hath chanced me to ſee, that order which the Councell during the minority of *Hen.* 6. did ſet downe to be obſerved amongſt themſelves, is no leſſe memorable then ſerviceable for this purpoſe: the which although it doe containe ſome Articles not altogether proper to this Argument, yet foraſmuch as it hath many points well tempered for the maintenance of this moderation, and the ſame ſo interlarded with the

reſt,

reſt, that it ſhould be violent to diſſever them: I will ſet it downe wholly as it came to my hands.

ORDER TAKEN FOR *the Councell during the Minority of King* Henry 6.

1 THat the Lord of *Bedford*, of *Gloceſter*, nor other of the Councell ſhall behote any fayour, but that each Bill and Suite ſhall be ſeene by the *Councell*, and by them to have reaſonable Anſwer.

2. That in the plaine terme the *Councell* ſhall one day in the Weeke intend to the reading and anſwering of Bills, which Anſwer ſhall bee indorſed on the Bill by the Clarke of the

ſame *Councell*, and on the *Friday* declare it to the party ſuing, unleſſe the great and notable cauſes of the *realme* let it.

3. All bills comprehending matters terminable at the *Common Law* ſhall be remitted thither, unleſſe the diſcretion of the *Councel* feel too great might on the one party, and unmight on the other, or cauſe reaſonable to moove them.

4. No *Councellour* take upon him to be party in any matter there to bee ſped, but if it touch him ſelfe, and then he not to be preſent while it is in hearing.

Each *Councellour* ſhall have full freedome to ſpeake what hee thinketh in the matters de-

demanded there, and none other of the ſaid *Councell* ſhall conceive indignation, therfore alwaies due reverence kept to every eſtate and perſon.

5. For avoyding of Anger, and indignation of perſons out of the *Councell* by diſcovery of things ſpoken, & treated there; no perſon whatſoever ſhall abide in the *Councel*, while matters of the *Councell* bee treated, ſave only the *Councellors* ſworne.

6. No *matter* ſhal be *aſſented* but at the leaſt there *aſſent* therunto 4. *Counſellors* & an *Officer* aſſembled in the *forme* of *Councel*, and at the time *appoynted*, & that ſhal not ſuffice, unleſſe they make the more part of the number then preſent in *Councell*.

7.

7 No Bill bee ſped but in place ordayned for Councell, and the Councell being there in forme of a Councell, and the Bill to bee read there firſt before them all, whereunto every man ſhall ſingularly ſay his advice, and then it may be ſubſcribed by the Lords there, or in any other place where the Clarke of the Councell ſhall bring it himſelfe unto him.

8 The Correction or removing of any Councellour, or great Officer of the King, ſhall proceed of the advice and aſſent of the more part of al thoſe that had bin appointed of the Kings Councell.

9 All matters touching the King, ſhall be preferred to all other

other both in *Parliament* and *Councell*.

10 The benefices and offices becomming void, and belonging to the Kings diſpoſition, thoſe ſhall bee preferred that have ſerved the King or his Predeceſſours, ſo that there be found among them perſons able thereto.

11 Out of the Terme-time, nothing ſhall be ſped in this Councell, but ſuch things for the good of the King, and the Land, that aske neceſſary ſpeed, and may not godly be abidden unto the Terme-time.

12. If the Opinions of my Lord of *Bedford*, or of *Gloceſter*, fall on the part of the leſſe number, and yet doe

move

move the greater number forthwith to condeſcend, then ſhall the matter dwell in deliberation, till the next day, at which every man ſhall ſay his reaſon, and then ſhal ſtand the opinion of the more part in number: and if the number be equall, then ſhall that party on which the *Lord* of *Bedford*, or *Gloceſter* is in, bee holden for the moſt part.

13. Where the *Kings Prerogative* or *Free-hold* is in queſtion, there the *Kings Judges* ſhall bee called, and their *names* and *advices* ſhal be entred of Record.

14. The Clarke of the *Councell* ſhall be ſworne, that each day of ſitting he ſhal cauſe the Bills of the pooreſt Suitors to be

be firſt read, and anſwered, ſo neare as he can aske, or inquire: And the *Kings Sergeant* to bee ſworne to give *Councell* without *Fee*, to ſuch as ſhal be accepted for poore, upon paine to be diſcharged of their Offices.

15. No Lord of this *Councell*, ſhal wittingly receive, cheriſh, hold in Houſhold, nor maintaine any *pillor*, *robber*, *oppreſſour*, *man-ſlayer*, *fellon*, *outlaw*, *raviſher*, *unlawfull hunter*, *open miſdoer*, or other openly named, or famed, for ſuch, till his *innocency* bee declared: Nor ſhall take any other mans cauſe, or quarrell into favour by *word*, *deed*, or *meſſage*, by giving *Livery*, or otherwiſe, by any *colour*, or *occaſiõ* of *feoffment*, *gift*, or *deed* of Lands,

Lands or moveables, nor ſhall receive indignation againſt any *Judge* or *Officer*, for doing his office in forme of *Law*, and ſhall cauſe their Servants, and all others in their Countries to doe the like.

16 No Lord of this Councell, ſhall by colour, or occaſion of *Feoffment*, or gift of lands, or other goods, receive, or take by himſelfe, or by any other, to his uſe any thing that ſhall ſtand in debate, or demand, without it be firſt ſpoken of, and committed to the Kings Councell, and by the more part of them conſidered to be lawfull to doe.

None of the ſaid Councell ſhall by himſelfe, or by any o-

ther

ther, take any gift for favour, or furthering of any perſon, or matter, upon paine to reſtore the double to the party, ſixe times as much to the King, and to bee forbidden to ſit in the ſaid Councell, till the King be otherwiſe adviſed.

Thus having made it clearely to appeare, who is, and ought to bee *Judge* of theſe Complaints, let us now alſo diſcover what is, and hath beene the moſt uſuall place for the exhibition of them. The third part touching the place.

It muſt be true, that the *King* and his Councell are not to be tyed to any one place, ſeeing that the place it ſelfe neither addeth, nor derogateth to, or from their authority, and there

be

bee many causes of remoove and change, from place to place, but yet even as the *Palace* at *Westminster* hath evermore beene reputed the chiefe royall seat of the Realme, as being most frequented with the personall presence of the *Kings*, and honoured with the Solemnity of the *Coronations*, & assemblies of Estates in parliament. So the *Councell Chamber* of that *Pallace*, hath obtained that dignity to beare a name above all others, and hath beene of long time called the *Star-Chamber*.

The *Star-Chamber* is the usuall place.

For it is said in the *close Roles de Anno*. 41. *Ed*. 3. That the same King upon the fourth day of *May*, in the fourtieth yeare

yeare of his raigne receiued the complaint offered by *Eliz.* the widdow of *Nicholas Audley* whereof I haue ſpoken, & ther-upon cauſed *James Audly* to appeare before his *Counce ll.* (viz.) his *Chancellour*, *Treaſurer*, *Iuſtices*, and other *Sages* aſſembled, *En la Chambre des Eſtoyers pres de la reſceipt al Weſtm.* in the *Chamber* of the *Starres* neere the *Receipt* at *Weſtminſter*. And the *Roll*, of *Patents de An.* 2. *Rich. part.* 1. *membr.* 28. hath the expreſse name of the *Star-chamber*.

Furthermore as it appeareth by *Record* that the ſame purgation of *Robert Danvers* wh ich I haue before mentioned was made the twentieth of *June*

Anno. 11. *Hen.* 6. *in Camera stellata coram Consilio Regis.*

So was that fraud aforesaid of *John Foard*, detected and punished in the *Star-Chamber* within the *Kings Palace* at *Westminster*, as by the close *Role*, *de Anno.* 17. *Hen.* 6. it is recorded.

It is moreover noted that upon the twenty eighth day of *November.* 28. *Hen.* 6. the *Kings Councell* being assembled in the *Councell* house, called the *Star-Chamber* at *Westminster*, *William Talbois* of *Southkirk* in *Lincolneshire* came accompanied with many riotous persons arrayed in warlike sort, and attempted to have slaine the said *Raph Lord Cromwell* of

whom

hom I told you before, being
ne of the *Kings Councell*, and
nen ſitting in *Councell* there in
he *Kings Pallace*.

I finde likewiſe that upon
he 21. day of *November* 32.
Hen. 6. *Richard* the Duke of
ork, being called before the
Kings great *Councell*, by privie
eale in the *Star-Chamber* at
Weſtminſter, complained that
is learned *Councell* was with-
drawn from him, and therefore
prayed they might without
mpediment reſort unto him
gaine, whereunto the Lords
ſſented, and commanded that
he ſame their aſſent ſhould be
ntred amongſt the Acts of
Councell.

It appeareth alſo upon the

first day of *Easter-Terme*, 35 *Hen.* 6. at *Westminster*, in the *Starchamber* before the Councell of the *King*, a Writ of *Proclamation* awarded by them against *John* the *Duke* of *Norfolke* was adnulled, because the first *Writ* issued upon the *Statute* of Riots, made 31. *H.* 6. *cap.* 2. and contained in it self no mention of Riots, and other the Covenants of that Statute.

After the time of King *Henry* the Sixt, this place was frequented for the like service by King *Edw.* the Fourth who in the eight yeare of his Reigne, sate there personally in Councell, attended with the Arch-bishop of *Yorke*

ork the *Biſhop* of *Durham*, *Bath*, nd *Rocheſter*, and the *Earle* of *Varwicke*, &c. there decreed, hat *cauſe* of the *Maſter* and *Bre-ren* of St. *Leonards Hoſpitall*, of hich I have uſed ſome menti-n before: And in the 20. *yeare* f the reigne of the ſame *King*, as that other *decree* publiſhed n the *Starchamber* which I no-ed before to have beene made or the *Abbot* of St. *Edmonds Bu-y* againſt the *inhabitants* of the ame *Towne*. Of which *King* al-o, the *chiefe Juſtice*, 1. *Hen.* 7. 3. eporteth, that he ſate and con-erred with his *Nobility* in the *Starchamber*, about the Execu-ion of ſundry ſtatute Lawes, or the better obſervation of hich hee there tooke the

Corporall oathes of them al

But to omit that of *Rich.* and ſundry other Records other times, concurring the ſame teſtimony, tho twelve ſeverall ſtately ſeſſion honoured with thero yall pre ſence of King *Hen.* 7. and ſom times with almoſt 40. of h Councel in the 1. and 2. year of his raigne, whereof I ſpak and ſundry others perform by his Councellours, & Coun cell in the ſame place, do mo aſſuredly teach that it was th ordinary Councell Chamb of the *King*, whenſoever he, an his Court did lie, and ſoioun at his *Palace*, in *Weſtminſter* fre quented no leſſe, with delib ration, upon matters of eſtat

hen for decreeing extraordi-
ary ſuits and cauſes of com-
laint. I think it no doubt but
hat *Judge Shard* which 28.
ib. Aſſis. Pl. 52. openeth the
verall ſignifications of the
ords *Coram nobis* in the K.
rits, meaneth the place, when
e ſaith, that *Coram nobis* with-
ut any more, requireth an
pearance before the *King* and
is *Chamber*, even as *Coram no-
is ubicunque, &c.* commandeth
n the *Kings Bench, &c.* and *Co-
am nobis in Chancellaria* willeth
t before the Lord *Chancellor*.

But from whence this place irſt purchaſ'd the name of *Star-hamber*, there may be divers oniectures, one by derivation rom the Engliſh word *Steo-*

The name of *Star-Chamber.*

ran, which ſignifieth to ſteare, or rule, as doth the *Pilot* in a Ship, becauſe the *King* and *Councell* doe ſit here, as it were at the Sterne; and doe governe the Shippe of the Common-wealth: Then of the *Latine* word *ſtellio*, which betokeneth that *ſtarry* and *ſubtile Beaſt*, of whoſe name the fault of crafty Coſenage is borrowed by the *Civillians*, which they call *crimen ſtellionatum*, becauſe the *Sinne* is puniſhed in this Court by an extraordinary power, even as it was in the Law Civill.

Laſtly, becauſe happily the roofe thereof was at the firſt garniſhed with guilded *Starrs*, as the Roome it ſelfe is

ſtarry,

ſtarry, or full of Windows and light, in which reſpect ſome of the *Latine* Records name it *Camera ſtellata*, the *French Le Chambre des Eſtoyells*, and the *Engliſh* the *Starred chamber*, as you may obſerve by that I have ſpoken before.

The ancient uſage of the *Starchamber* before the *Stat.* 3. *Hen.* 7. *Cap.* 1.

But leaving the choyce of theſe, as alſo all further coniecture therein to other men, I will proceede to ſet forth the uſage of proceeding in this place, before the making of the Statute 3. *Henry* 7. *cap.* 1. the which ſome men (but much deceived) doe take to have laid the firſt ſtone of this farre more ancient and ſtately Erection. Vpon complaint exhibited,

or was ſent for by *Corpus cum cauſa*, if he were in priſon: The Defendant was ſummoned, or called in, either by *writing*, or *meſſenger*; by *writing*, as by the Kings owne Letter; or by his *Privy Seale*, directed under a paine to the party ſelfe, or to the *Sheriffe*, to take Sureties for his appearance, or by Letters miſſive from the Councel; and if he made default, then upon *affidavit* made by an *Attachment* and *Proclamation* of *Rebellion*, if the caſe require it.

By monition of *Meſſenger*, as by a *Sergeant at Armes*, who upon contempt of former *Proces*, or upon doubt of the flying of the party, or for his being neare at hand, or in re-

reſpect

reſpect of the heinouſneſſe of the fact, was many times addreſſed to ſeize upon the Defendant, and to bring him into the Court.

The *Pleading* was by *Bill*, *Anſwer*, and *Replication*, as by the Records of theſe two caſes of St. *Edmonds-bury* and St. *Leonards* Hoſpitall before mentioned, I doe plainely finde: the *hearing* was aſwell by examination upon Oath of the Defendants themſelves, as of their witneſſes againſt whom the manner was to award Compulſaries for their appearance, if the party would depoſe their teſtimony to be neceſſary for him, and if their ability of body would beare the travaile:

if

if not, then were they in pitty of their impotency examined at home.

The determination, was by *decree*, which passed by the assent of the more part, delivering their *opinions* singularly wherby either the the cause was decided in the *Court*, or dismissed to *tryall* at the *Common Law*, or otherwise upon default of the *plantive* being proclaimed, or called thrice at the *Councel doore*, the *defendant* was quite *dismißed* with his costs and expences.

The Officers of the *Star-Chamber.*

The *Officers*, or Ministers that I finde were then the *Usher*, the *Serieant* at *Armes*, the *Atturneies*, and the Clarke. The *Usher* for the keeping of the *roome*, the proclaiming of silence, the calling

calling of names, & other baſe *ſervices*, and the *Sergeant* as well to beare the *Mace* for the honor of the *Lord Chancellour*, as for to *arreſt* and bring ſuch as he was commanded.

Touching the *Atturnies* I wot not whether their *Servite* might then be called a ſtanding *uffice*, or no, becauſe they were at large ſome 2. or 3. at once being received, to follow for one clyent in ſo much as there were above 30. ſeverall *perſons* imployed thereabouts, during onely the firſt and ſecond yeares of *King Hen. 7.*

The *office* of the Clark of the *Councell*, was to *Take*, *Endorſe*, *Enter*, *Keepe*, and *Certifie* the *Bills*, *Pleadings*, *Records*, *Rules*,

Rules and *Decrees* of the Court. And as it is not to be doubted but there hath been from time to time, A Clarke of the *Councell*, conſidering that ſuch a Court could not be without the ſervice of ſuch a Miniſter, albeit happily his authority in examining of witneſſes, taking of *Affidavits*, and admitting men by Aturney was by little, and little enlarged: So I doe not finde it expreſſed, who was the *Clarke* during the minority of *King Hen.* 6. or at any time before it, for the very firſt of whoſe name I have read, was *Thomas Kent*, a *Doctor* of the *Law*, to whom *King Henry* the ſixt, by his Letters Patents dated 15. of *July* in the 22 yeare of

of his raigne, gave both that office for his life, calling him *Clericum Conſilij noſtri*, and the office of the ſecundary of the *Privy ſeale*, with wages of 100 pounds by yeare, and with power for reaſonable cauſe of abſence, to make his ſufficient Deputy therein after him, whether immediately or no, I have not to affirme, becauſe that I ſuſpect that one *Langport* was betweene, in the firſt yeare of *King Hen.* 7. *John Bladſwell*, A *Doctor* of *Lawes*, alſo was made Clarke of the Councell, and exerciſed the ſame Office; The degrees of which two men, whereof the firſt was afterwards ſworne of the Councell, doe ſet forth the dignity of the

place,

place being as I ſuppoſe the beſt Clarkſhip of this Land, unleſſe you will call the Maſter of the *Role* a Clarke, againe, as ſome former *Statutes* are wont to name him.

And theſe be the onely named men of that place with whom I have yet met before the ſtatute made in the 3. yeare of K. *Hen.* 7.

After whom, that I may ſhortly *ſummon* them all, there ſucceeded in the ſixt yeare of King *Hen.* 7. *Robert Riden*: In the firſt yeare of King *Hen.* 8. *John Meutis*, *Secretary* for the *French*: and in the fourth yeare of the ſame King, *Richard Eden*, during one time, of whoſe ſickneſſe, *Thomas Eliot* held

the

the place, in the 22. yeare of which *King* alſo the *Office* was upon a ſurrender granted ioyntly, to that *Rich. Eden* & *Thomas Eden* which laſt man forthwith exerciſed the ſame alone. And in the fifth yeare of *King Ed.* 6. it was granted in Reverſion, after the death of that *Thomas Eden*, to *Thomas Marſh*, to whom it fell in *Poſſeſſion*, in the ninth yeare of her Maieſty that now is, in like Reverſion, after whoſe death, it was likewiſe granted to *William Mills*, mine ancient favourer, a man Trayned up from his youth, in the Services of that Court, who tooke it in poſſeſſion the fifteenth yeare of

her Highneſſe Reigne, and now holdeth: by whoſe good *labours* and *friendſhips* alſo I was the better enabled to write ſome part of this preſent diſcourſe. But having now runne through the ancient uſage of this Court, there remaineth a conſideration of that *Statute* made in the 3. yeare of K. *He.* 7. by which the perſons therein named, are authorized by their diſcretions to examine certain offences, and the ſame to puniſh according to the effect of the *Statute-lawes*, the very words whereof be theſe.

The *King* our *ſoveraigne Lord* remembreth how by unlawfull maintenances, giving of Liveries, Signes, and Tokens, and

and by Retainders by Indentures, promiſes, and other writings, or otherwiſe imbraceries of his *Subiects*, untrue demeaning of *Sheriffes*, in making pannells, and other untrue returnes, by taking of money by *Juries*, by great *Riots*, and unlawfull *Aſſemblies*, the policy and good rule of the *Realme* is almoſt ſubdued, and for not puniſhing thoſe inconveniences, and by occaſion of the premiſſes nothing, or little may be found by inquiry, whereby the *Law* of the Land in execution may take little effect, to the encreaſe of *Murthers*, *Robberies*, *Periuries*, and unſurety of al men living, and loſſes of their lands, and

goods, to the great diſpleaſure of *Almighty God*. Therefore it is ordayned for reformation of the premiſes by authority of the ſaid *Parliament*; that the *Chancellor*, and *Treaſurer* of *England* for the time being, & *Keeper* of the K. *privy Seale*, or two of them, calling to them a *Biſhop*, & a *temporall Lord*, of the *Kings moſt honourable privy Councell*, and the chiefe *Juſtices* of the *Kings bench*, and *Common pleas* for the time being, or other two *Juſtices* in their abſence upon *Bill*, or *Information*, put to the ſaid *Chancellour* for the K. or any other againſt any perſon, for any misbehaviour, afore-ſaid, have *authority* to cal before them by *writ* or *Privy Seale*, the ſaid

miſ-

miſdoers, and them, and others by their diſcretions, by whom the truth may be knowne to examine, and ſuch as they finde therein defective, to puniſh them after their demirets, after the forme, and Effect of the *ſtatutes* therof, made in like manner, and forme as they ſhould, or ought to be puniſhed if they were therof convict after the due order of the *Law*. *Anno*. 3. *Hen*. 7. *cap*. 1. This Statute as ſome have thought, was made for the reſtraint of that abſolute authority, which before time was exerciſed by the Kings *Councell*. So as after the making thereof, they were to take Knowledge of theſe few Cauſes onely,

and of none others.

But I doe rather expound it by way of enlargement of their Iuridicall authority, for inſomuch as there is not in it any words prohibitory touching the former manner of proceeding, and the ſcope of this Law, is to have thoſe offenders convicted by other meanes, then by order of *Law*, as they were before, I gather thereby that the ſtatute giveth an additament of this ſort. (*viz.*) that whereas before time, the *King*, and the *Lords* of this *Councell*, did not admit any complaint, for ſuch only as carried within it a reaſonable ſurmiſe of maintenance of their *Juriſdiction*; for the proofe

wher-

whereof alſo the *Plaintiffe* ought by the *Statute* 5. *Hen.* 6. *cap.* 4. to give ſureties, as I have before ſhewed. Now by this new *Statute*, over, and beſides that ancient authority, onely three of the *Councell* (*viz.*) the *Chancellour*, *Treaſurer*, and *Keeper* of the privy *Seale*, uſing the aſſiſtance of ſome others thereunto appoynted, were enabled to heare, and determine ordinarily of theſe eight offences, and that without any manner of ſuch ſuggeſtion, or ſurmiſe at all: and that both *King Hen.* 7. and *King Hen.* 8. did many yeares after the making of this *Statute*, ſometime in perſon, and very often by their *Councell*, practiſe

by former *iuriſdictions* in Star-*Chamber*, without any helpe of this new *Law* and *Statute*, it doth moſt certainely appeare by the *Bookes* of *Entries* kept there, which is a true *Iournal* of the *acts of the Court*.

But for aſmuch as they of the *Parliament* holden in the 25. yeare of K. *Hen.* 8. eſpied ſome *defects* in this *Statute* of H. 7. they did ſupply the ſame after this manner following, *viz.* The *Chancellour*, *Treaſurer* of *England*, and the *Preſident* of the *Kings moſt Honourable Priuy Councell*, attending upon his *moſt Honourable Perſon* for the time being, and the Keeper of the *Kings Priuy Seale*, or two of them calling unto them, one

Biſhop,

Biſhop, and one *temporall Lord* of the *Kings moſt Honourable Councell*, and the two *Chiefe Juſtices* of the *Kings Bench*, and the *Common Pleas* for the time being, or other two of the *Kings Juſtices* in their abſence upon any Bill of *Information* hereafter to be put in. The *Chancellour* of *England*, *Treaſurer*, *Preſident* of the Kings ſaid *moſt Honourable Councell*, or Keeper of the Kings *Privy Seale* for the time being, for any miſbehaviour before rehearſed, from henceforth have full power and authority to call before them by Writ of *Privy Seale*, ſuch miſdoers, and them, and other by their diſcretion by whom the *truth* may be

be knowne to examine: And ſuch as they ſhall finde defective, to puniſh them after their demerits, after the forme and effect of the ſaid former *Statute*, and of all other *Statutes* thereof before made, and not repealed, and expired in like manner, and forme as they ſhould or ought to be puniſhed, if they were thereof convicted after the due order of the *Kings* Laws. By which latter *Statute* theſe things following are brought to paſſe, *viz.* firſt, that the *Preſident* of the *Kings Councell* is hereby added to that *triumvirate*, and is made one of the *Judges* of them.

Secondly, a doubt is here taken away, that might be moved

ved upon the words of the firſt *Statute*, namely, whether the *Biſhop*, the temporall Lord of the *Kings Councell* named in that *Statute*, were *Judges* equall in his *Authority*, with the other three great *Officers*; or elſe whether they were but onely aſſiſtant unto them with their advice: For heere, in this latter *Law* the full *Authority* is given onely to thoſe three, and the *Preſident*; ſo as the reſidue are to be called onely for their advice: But yet ſo, that the proceeding is erronious, if either the other foure doe not call them, or doe not heare their advice when they be called.

Laſtly, the Bill, or informati-

mation ought by this latter *Statute* to be put in generally, that is, to the King, as it was wont to be: Whereas, by the ſtrict words of the former Act, the ſame was to have beene exhibited to the *Lord Chancellour*: And thus by the benefit of theſe two *Statutes* the iudiciall handling of theſe eight offences which before did proceed, as I partly touched, either by way of Indictment, or Action, may now be performed without any *Enqueſt* or *Verdict*, even by the onely *examination* either of competent witneſſes of the parties themſelves, or of both; a courſe which was never before permitted by the *Common*

Law

Law of the *Realme*, wherein no *Tryall* was allowed; but that onely *per legale Judicium parium*, as the great *Charter* it ſelfe plainely doth acknowledge.

And this was now at the laſt devi ed, becauſe as the *Statutes* themſelves doe report, that ancient and ordinary proceeding at the *Common Law*, againſt theſe *Maintainers*, *Ryoters*, and the reſt of the common *rabble* was hindred by the greatneſſe of the *Offendors*, which were by-like ſo *breſted*, *ſided*, and *backed* with a many friends, Tenants, and followers in their owne Countries, that none *Indictment* or *tryal* could make

make the way to touch them:

Which thing threatned the utter ſubverſion of the good policy of the Realme, if this ſoveraigne and higher hand had not beene timely extended for helpe, and remedy.

Howbeit by the expreſſe words of theſe new Lawes theſe offences named in them, are in none other degree to be puniſhed in this Court now, then they were before upon conviction by iudgement, and the triall of twelve.

And therfore the change that is offered, reſteth cheifly in the circumſtances of place, proces, and meane of tryall, the very ſubſtance it ſelfe (that is to ſay)

the

the diſcretion of the fault it ſelfe, and the diſtribution of the paine due thereunto, remaining the very ſame that they were before; from the which appointed paines, if the Lords ſhall at any time thinke good to vary and depart, then it muſt be underſtood to be done by that former authority which they had, and have as the Councell of the King, and not by vertue of theſe *Statutes*, which doe leave unto them no liberty at al in this behalfe, for we may not ſo conioyne, or rather confound theſe Authorities, as either of them ſhall be extinct, and drowned in the other, but we muſt preſerve them both ſeparably, and

and distinct, not onely in understanding, but in execution, and practice also, even as when the *Justices* that ride the Circuits, do bring with them into the Countrey one *Commission* of *Oyer*, and *Terminer*, and another of *Gaole Delivery*, and a third of the *peace*, and doe sit upon the triall of *Felonies*, they may lawfully extend their authority by the one, where the other will not reach, and serve the businesse, which thing they could not do if by such a Coniunction, the greater *Commission* should be said, to devowre and swallow the lesse, and this one hold is of sufficient strength to withstand the Assaults of all

A Confutation of some objections against the *Star-Chamber*.

all thoſe obiections which ſome are wont to make againſt certaine the proceedings in this Court.

For whereas they doe think that none other complaints can be ſentenced heere, but theſe onely, which are in theſe Statutes, or ſome other ſpecially appoynted to be thus determined, they be deceived, for that they do not caſt their eyes upon that former power, which theſe Lords and others doe bring hither with them, as the Councell of the *Queene*, the which is not to bee reſtrayned to theſe ſo narrow bounds. And no leſſe doe ſome others erre in iudgment, which do maintain, that

without the preſence of ſome two of theſe foure Lords mentioned in the laſt *Statute*, no decree made in this Court is warranted by the *Law*, for they are convicted by ſome former reaſon, conſidering that the *Councell* of the *Queene* ſitting there in forme of a *Councell*, are not deprived of that ancient authority, by the abſence of any two or three of them.

More probably I confeſſe, doe thoſe men reaſon, who preſſing this Court with the words of theſe *ſtatutes*, and with the generall uſage of all other Courts of *Juſtice*, doe thinke that a *Bill*, or *Information* in writing is ſo neceſſary for ſetting the *Complaint* on foot there,

there, as that without it; the proceeding verbally, (or *ore tenus* as we call it,) is not in any case to be allowed.

It is true that the hearing, and determining causes upon Bills and answers in writing, is generally a very sure manner of proceeding, as well for the cutting off of all tergiversation, and Cavelling betweene the parties, as for the warrant and defence of the Iudges *them selves. But yet it seemeth to me that in speciall cases this Court both hath sufficient authority, and may by good discretion take knowledge of of the cause, and decree punishment for it, without any such information of the matter set downe in writing: for as all travells, and Labours of whatsoever Iudges ought*

to bee directed to this onely end, to marke that the truth of the Controverſie being found out, Juſtice may be delivered, and as in a Criminal Complaint (which is the proper ſubiect of this Court) the truth can no way better appeare, then by confeſſion of the offender himſelfe. So if either the neceſſity of the cauſe doe require, that the guilty party bee ſpeedily committed, or charged, or if hee bee deprehended in flagranti crimine, in committing the fault, or if the offence doe onely, or cheifly concerne her Maieſty, or if the circumſtances thereof, be ſuch as may not ſeemly abide the blazing of a Bill, and then the offender ſhall, upon Examination, freely, and without torture confeſſe the Body, and ſubſtance of the crime that is verbal-

ly

ly, laid to his charge, ſurely neither he, nor any for him, can iuſtly complaine of Iniuſtice, in that he is ſentenced without Bill, and anſwere in writing; whereof when Juſtice is once ſatisfied, I ſeenone other uſe, but only for a memoriall in which behalfe the proceeding it ſelfe being entred in the Records of the Court, ſhall be an act of equal credit, with thoſe that begun by bil in writing: and it is plaine that bill & anſwer in writing be not the ſubſtance, but only of the ſolemnity, & ceremony of iudicial proceedings, the which alſo may beſt be ſpared in criminall cauſes, in which otherwiſe the delivery of Iuſtice, may ſomtimes be hindred by over-much formality.

For which cauſe as I think, King Ed. 1. in that place of Brittain,

which I have cited, sticketh not to affirme, that it belongeth to his kingly office, to give due Judgment whereſoever the very truth doth appeare, sans auter proces, without any other formality, Ceremony, Solemnity, or Proces at all. And therefore if after a Bill exhibited here, and the matter of complaint proved by Examination of the party, and by depoſition of witneſſes, it ſhould fortune the Bill, or other parts of the pleading to be imbecelled or loſt, I would not doubt, but that this Court which muſt not alwaies be tyed to the ſtrict order of Pleading, that is neceſsary to be obſerved in ſome other Courts, might either cauſe a new Bill to be framed upon the matter already proved, and brought to light, or elſe command

the

the Queenes *Atturney to enforme it* Ore tenus *verbally, without offer of any Bill at all. According to which ſummary manner of Judgement the* Kings Councell, *who have the exerciſe of the ſame, his owne Authority have many times proceeded in this Court: Whereof the Bookes of entries there, hath plentifull teſtimonies, which I for avoyding the odious rehearſall of mens names, not yet forgotten, doe willingly forbeare to reduce.*

Thus have I made it appeare both what hath beene the right uſage of this Court, by the originall power thereof, and what acceſſe of Authority it hath received by theſe new *Lawes* and *Statutes*,

the which were as you ſee, ordayned to apply a moſt honorable, high, awfull, and ordinary remedy for theſe enormities and exceſſes, which were at that time growne ſo exorbitant and high, that they might not ſufficiently bee revenged by the Inferior *Judges*, and uſuall ſtroake of the *Common Law*. In which caſe right neceſſary it was, that the *King himſelfe*, and ſuch as were neareſt in the ſtaire of *Authority* underneath him, ſhould ſhew themſelves, by the *Majeſty* and awe of whoſe *perſonall ſtate* and *preſence*, both theſe *offenders* might be abaſhed, and beaten down, and theſe *offences* might be made exemplary, and

forewar-

forewarnings to other men.

And therefore this is all that for this time and ſervice, I purpoſed to ſay in this moſt noble and praiſe-worthy *Court*, the beames of whoſe bright *Juſtice*, equal in *beauty* with *Heſperus* and *Luciſer*, (as *Ariſtotle* ſayd in like caſe) do blaze, & ſpread themſelves as far as the *Realme* is long or wide, and by the influence of whoſe *ſupereminent authority* all other *Courts* of *Law* and *Juſtice* that we have, are both the more ſurely ſupported, and the more evenly kept and mannaged. Howſoever in the ſtormes of *open war* and *hoſtility* betweene us and the *Scots* our moſt *ancient enemies*, the *ſubiects*, on either ſide have gone to wrack,

The Wardens Court in the Marches of *Scotland*.

wracke, and the Lawes have beene ſilent, while the Drum and Trumpet were heard to ſound yet in every calme, and upon every truce, or peace taken, and concluded, both humane reaſon, and Cuſtome have afforded mutuall, and recipricall delivery of Law, and *Iuſtice* to the one ſubiect againſt the other: without the which, truce were not onely no truce at all, but the continuance of a daily, and moſt dangerous lying in wait, which would bring with it a greater evill and miſchiefe, then war it ſelfe.

And therefore to the end that the conditions of the peace agreed upon, might be inviolably

lably obſerved for the time, and that both reſtitution for harmes, and puniſhment upon harme doers, might be made, and executed with all indifferency. Certaine *Courts* have of long time bin *maintained* by the *Wardens*, or *Keepers* of the *Marches*, and *Limytaine* grounds that doe border upon either of the ſaid *Kingdomes*, the which are open to all that will complaine of any *Offence*, tending to the *Violation* of that *Common peace* of both the *Nations*.

And albeit that is very *probable*, that the ſame begun with the firſt truce taken between us, and the *Scots*, ſeeing that without it, or ſome other

meane

meane, the Articles of the *truce* could not well be maintained: yet forasmuch as the bounds betweene us and the *Scots*, were not constant nor setled, but very moveable and uncertaine, even as either side did for the time winne, or lose upon the other, untill that both the Townes of *Carlile* and *Barwicke* being meetest to command at either end, and were without change reduced to our hands and possession. I suppose that these Courts were planted about the time of King *Edw.* 3. and so taking root from thence by little and little, to have grown to that stayed order and authority which now they do enioy.

They

They on our part, be at this day in number three, whereof one hath ſprung up ſince the time of King *Henry* 6. who in a *Statute* made in the 31. yeare of his Reigne, for redreſſe of Indictments taken there, reciteth onely the two Courts of the *Eaſt* and *Weſt Marches*, uſing no words at all of the *Middle March*, which is now of the like credit with them.

The ſame *Statute* alſo boundeth the Iuriſdiction of theſe Courts, not to extend beyond the *Shires* of *Weſtmerland*, *Cumberland*, and *Northumberland*, and the Towne of *Newcaſtle*, upon the River of *Tyne*.

What manner of proceeding they

they uſe, I doe not throughly know, neither is it greatly pertinent to this preſent labour, and therefore leaving the ſearch thereof to ſuch as ſhall be deſirous to underſtand the ſame, I will proceed as I have begun.

The *Dutchy* Court of *Lancaſter*.

The Court of the *Dutchy* or *County Palatine* of *Lancaſter*, grew out of the grant of the ſame King *Edward* 3. who firſt gave that *Dutchy* to his Sonne *John of Gaunt*, and endowed it with ſuch Royall rights, as the *County Palatine* of *Cheſter* had. And foraſmuch as it was afterwards extincted in the perſon of King *Hen.* 4. by reaſon of the Vnion of it with the *Crowne* of the *Realme*, the ſame

King

King knowing himſelfe to be more rightfully *Duke* of *Lancaſter*, then *King* of *England*, determined to ſave his right in the *Dutchy*, whatſoever ſhould befall him in the poſſeſsion of the *Kingdome*. And therefore hee ſeparated his *Dutchy* from the *Crowne*, and ſetled it ſo in the naturall perſon of *himſelfe*, and his *Heires*, as if he had bin no *King*, or politicke body at all: In which plight it continued during the Reignes of King *Henry* 5. and K. *Hen.* 6. that were his deſcendants.

But when King *Edward* 4. had by recovery of the *Crowne*, continued the right of the Houſe of *Yorke*, he feared not

to

to appropiate that *Duchie* to the Crown againe. But in this manner it came together with the Crowne to *King Hen.* 7. who liking of the policy of *King Hen.* 4. by whose right also he obtained the *Kingdome*, made like separation of the *Dutchy* as he had done before, and left to his *posterity* which do yet enioy it.

The Court of Requests.

In that the *Court* of *Requests* handleth causes that desireth *Moderation* of the rigour, which the *Common Law* denounceth, it doth plainely participate with the nature of the Chancery, but in that the *Bills*, here be exhibited to the Maiesty of the *King* onely, and to none other; and in that it hath

hath continually beene ſerved with a *Clark* that was ever therwithal one of the *Clarks* of the *Kings privy Seale*: It ſeemeth to communicate with the *Star-Chamber* it ſelfe, and to derive the Authority immediatly from the royall perſon, as that doth.

For the very ſame reaſons by the which we have already prooved before, that the *King* may be appealed unto, for matter of Crime, where iuſt cauſe doth enforce it; doe no leſſe forcibly convince, that he is alſo to bee fled unto for *Equity*, in rare caſes in civill ſuit, where the ordinary rule, of his Law is too hard and heavy for his ſubiects. And no

leſſe incident is it to the Kingly *Office*, to relieve the ſuitors oppreſſed under the burden of grievous Law, then to deviſe correction for the inſolent Malefactors, againſt whom no former Law or Statute, hath beene provided. It is out of all doubt therefore, that as our *Kings* have uſed perſonally to receive complaints of *Criminall* condition, and have *adiudged* thereof, of themſelves, or by their *Counſell* of *Eſtate*, ſo have they alſo from time to time, taken knowledge of *Civill ſuits*, eſpecially offered by the poorer ſort of Subiects, or by their owne houſhold men, and have for the moſt part recommen-

commended the ſame to the care of ſome of their ſaid *Councell*, aſſiſted with their advice, of men learned, both in the *Civill & Common Lawes*: ſo as ſome one temporall *Lord*, or *Biſhop*, two Doctors, and two *Common Lawyers* have bin many times knowne to have ſitten neere togeather.

And therfore it was (as I ſuppoſe) that the cauſe of the two ſiſters, wherof I have told you in the *Starchamber* before, was ſaid to have been heard before the *Preſident* of the *Requeſts*, that is, before the Lord, or Biſhop, which was the principal perſon of this Company.

Now albeit there can no other beginning thereof be

conceived, then together with the very regality, and *kingdome* it ſelfe : yet foraſmuch as they of this *Court*, have not alwaies had their ſtanding place of reſort, but have until the *age* next before this, *remained*, & remooved with the K. wherſoever he went, travailing between the *Prince*, and petitioners, by dereſtion from th e mouth of the K. I have in this, as in the *Starchamber*, alſo taken the firſt apparent ſetling & manifeſt continuance thereof, for the very ſpring and originall it ſelfe.

And I have lately ſeene, that from the eighth yeare of K. *H.* 7. ever ſince which time this *Court* hath reſted in the place called the *White-hall*: the *bookes* of the

the *acts* ofe *Entries*, there have bin orderly digeſted & kept, in which you may read the *handling* of the *cauſes*, not onley of *porre men*, and the *Kings ſervants*, but alſo of ſundry *abbots*, *knights*, *eſquires*, & other rich and wealthy *complainants*. Howbeit I do wel *remember*, that within theſe 40. *yeares*, the *bills* of *complaints*, *preſented* there, did ordinarily carry the one, or the other of theſe two ſuggeſtions, namely that the Plaintiffe was a very poore man, not able to ſue at the *Common Law*, or the Kings ſervants, ordinarily *attendant* upon his *perſon*, or in his *houſhold*. But becauſe *enlargment* of *iuriſdiction* is not proper to *Court* alone, but common to it

with all the reſt, I will not now ſtand to obiect it, but haſten to an end.

The Maſters of the Requeſts *are neither called by* Writ, *nor appointed by* Commiſſion, *nor created by* Patent, *but onely have* Letters Patent *for their Fees and Sallary, and doe take the ſame Oath which the* Councellours *doe conceive.*

The Clarkſhip *of this Court hath, as I ſaid, beyond all memory beene committed to a* Clarke *of the* Privy Seale.

For Mr. Richard Oſley *now* Clarke, *hath ſerved in that place* 46. *yeares, ſucceeding therein to his Uncle* Richard Turner, *who had ſpent* 66. *yeares partly as ſervant, and partly as Officer there.*

The

The ſame Turner *had followed* Robert Sampſon, *the ſucceſſor of* Lacy, *both well knowne unto him, all which were in their times ioyntly both* Clarkes *of the* Privy Seale, *and of this Court alſo.*

The Atturneyes *were in my firſt knowledge of them, but two onely; and now are three, whoſe places are at the diſpoſition of the* Clarke.

The uſuall Proceſſe is by Privy Seale, *alias* Privy Seale, Attachment, *and* Writ *of* Rebellion, *if the contumacy of the Defendant doe ſo deſerve in the reſt of the proceedings: the courſe is not much different from the order of the* Chancery.

The Preſident and Counceil in the Marches of *Wales.*

King Hen. 8. *eſtabliſhed one Court of* Preſident *and* Councell *in*

in the Marches of Wales, and another like Court of President and Councell in the North parts, both which be Courts of Equity in the principall iuriſdiction, although they doe withall exerciſe other powers by vertue of other ſeverall Commiſſions, and doe accompany the ſame.

The Court of Wards and Liveries.

The Court of Wards began in our minority, about the 32. yeare of the Reigne of King Hen. 8. who alſo in the next yeare after, added thereunto the office of the Maſter of the Liveries, and therewithall conioyned their names, ordayning that it ſhould bee called the Court of Wards and Liveries.

The Court of Augmentation.

The ſame King likewiſe had erected one Court of the generall Surveyors of his Lands, and one other of the augmentations and reve-

nues

nues of his Crowne, and a third Court of the first fruites, and tenths of Benefices. But all these were afterwards dissolved, and by Queene Mary united to the Court of Exchecquer. But now the Ecclesiasticall Courts being numbred, and those Lay-courts thus handled, it resteth, that I adioyne the Parliament, which is mixed of both these natures, as having the Bishops in respect of their Baronies, and not of their Churches, ioyned with the Lay-Lords to make up the second estate thereof. The first estate consisting of the Prince alone, and the third of the Comminalty, without any of the Clergy at all. Parliament.

Besides the which it is summoned to devise Lawes, both Ecclesiastical, civil, criminal, & material, it ministreth

ſtreth the matter whereupon all the reſt of the Courts doe worke, and it hath in ſome caſes an ordinary Juriſdiction alſo.

That which we (now agreeing with the *Scots*) doe name a *Parliament*, the *Frenchmen* doe call *Les Eſtates*, or *Aſſembly des Eſtates*, becauſe with them there, as with us alſo the Eſtates of the Land doe meet thereat, to conſult; and the ſame in *Germany*, is termed a *Dyet*, for theſe other Courts that carry the name of *Parliament* in *France*, be but ordinary Courts of Iuſtice, which as *Paulus Iouius* writeth, are thought to have beene planted there by us. And of which our owne Councells eſtabliſhed in

Wales

Wales, and in the North-parts doe beare the neereſt ſhew, and reſemblance.

The word *Parliament* (ſaith one) is compounded of *Parium* & *Lamentum*, becauſe (as he think-eth) the Peeres of the Coun-trey did at theſe meetings la-ment and complaine each to other of the enormities of their Countrey, and thereupon pro-vided redreſſe for the ſame. The word *Parliament*.

But their opinion is more probable, as I think, which de-rive *Parliament* ſimply from the *French word Parler*, & that alſo from the *Greek*, both ſignify-ing to *ſpeak*, & ſo by adding the *termination Ment*, which is com-mon in the *french tongue* as wel to *nownes* as *adverbs*, do make up

Parli-

meaning thereby an assembly of men called together, to *speak* or *confer* their advices, or opinions. And so also it may not unfitly be called *Parliament*, for that each man there doth, or should *Parlar lament*, speak his minde: But *Laurence Valla* misliketh that manner of *Etymology*, and therefore I will not stand upon it.

I dare not take upon me to set downe the very time in which the *word Purliament* came first in use, but forasmuch as it was *transported* out of *France*, it is not unprobable to ghesse that it began heere shortly after the time of the *Norman Conquest*.

One of the first authentical reports

ports of that name *Parliament*, hat I have found, is in the *Sta-ute* made the 3. of *Ed.* 1. and ommonly called *Weſtminſter he firſt*, where that *Aſſembly* is aid to bee *Le primer Parliament enerall apres Coronement le roy.* But yet that is not the very firſt uſe of the word, for in the *ſta-tute* called *Articuli cleri*, and publiſhed the 9. *Ed.* 2. theſe words are read amongſt others *Temporibus progenitorum noſtrorum quondam Regum Angliæ in diverſis Parliamentis ſuis, &c. which words progenitorum* and *quondam*, *muſt needs reach higher then to E.* 1. *that was but father to him that ſpake it.* So that I can willingly here-in *ſubſcribe* to the *opinion* of *Poly-dore Virgil*, who in the 11. *book* of his

his *English History*, which containeth the Reigne of K. Hen. I that was Sonne to the *Conquerour*, writing of the great Assembly at *Salisbury*, saith thus, *At illud oppoſite habeo dicere, Reges ante hæc tempora non conſuevisſe populi conventum, conſultandi cauſa perraro facere, adeo ut de Henrico id inſtitutum Jure manaſſe dici poſſit, &c.* And a little after, *more Gallico vulgo Parliamentum appellant, &c.* And this is so much the more credible, as that King laboured by all meanes, and especially by the restitution of the ancient *Lawes*, as all Historians doe agree, to heale the hearts of the *English men*, which were before deepely wounded by

the

the oppreſſion of his Father, and Brother *William*, to the end, that hee might thereby the better keepe the *Crowne* of this Realme againſt the Elder Brother *Robert*, who had both colour of good right, and had mooved his claime thereto. But at what time ſoever after the Conqueſt, this Court began to be called by the name of *Parliament*, this is certaine, that the ſame was before knowne to the *Saxons*, or *Engliſh men*, ſometimes by the word *Synoth*, and *Micle*; *Synoth* of the Greeke *Synodos*, now appropriated to the Eccleſiaſticall meetings onely, and ſometimes by theſe termes, *Micel zemore perenazemore*, and

Eal-

Ealpapire nazmore, that is to ſay, the *great meeting*, the *meeting* of the *wiſe men*, *or the meeting of all the wiſe men*.

For *Pirena* ſignifieth *Wiſemen*, *caſtua*, *all*, and *zemote*, *meeting*; of which laſt word the names of *Shiremote* and *Folkemoote*, and *Halymoote*, (that is to ſay) the *Aſſembly*, or *Meeting* of the men of the *Shire*, of the men of a *Towne*, and of the *Tenants* of a *Hall*, or *Mannour*, had their beginnings alſo.

And as *Synoth* is more uſed in the Acts of *Parliaments* themſelves, ſo *Gemote* is more familiar to the Hiſtorians: Thus much aſwell of the preſent, as of the ancient uſuall name: now let us looke into

the

he thing it ſelfe.

Like as in Warre *where the King is preſent in perſon, and with him the* Nobility, Gentry, *and* Yeomanry, *there is the force, and puiſſance of the Realme: Even ſo in* Peace, *whereſoever the* Prince *is, as the Head to give life, (that is to ſay) to yeeld the higheſt and laſt aſſent. And where the Barony, conſiſting of the* Lords ſpirituall, *and* temporall, *and the* Cominalty *made up of the* Knights, *and* Burgeſſes, *be as the body preſent at his call, to the end, to deliberate, conferre, and conclude. There is alſo the* Councell *and* Policy *of the Realme: So that forasmuch as every man from the higheſt to the loweſt, is there either in perſon, or by procuration; There-*

The Conformity and Relation of the three eſtates in Parliament.

fore of right reaſon, every man is ſaid to be bound by that which doth paſſe from ſuch an Aſſembly. And this frame of policy is both naturall, and harmonicall; naturall, in that it hath an imitation of the naturall body of man, truely called a little world; out of the three Cells whereof, namely, the Head, Breaſt, and Belly, the whole three powers of the Soule doe open, and utter themſelves: And Harmonicall, becauſe from ſuch, and ſo tuned, a baſe, meane, and treble, there proceedeth a moſt exquiſite conſent, and delicious melody.

The beginning of the Parliament.

The beginning of which manner of Conſultation, and namely with us of this Realme, I ſee not how I can derive it from any other time, then from that, in which the Germaine,

maine, *or* Engliſh *did ſet their firſt foote on this Land to invade it.*

For Cornelius Tacitus *writing of the manners of the ancient* Germans, *ſaith thus,* Nec Regibus infinita poteſtas, de minoribus rebus Principes conſultant, de maioribus omnes. *Neither did they together with the change of the ſoile, make change of this wonted manner of deliberation: For it is yet extant in Monuments left behinde them, that after their comming hither, they frequented the ſame order in counſailing, which they had uſed in their owne Countrey before. For proofe whereof, I might call* Beda *the* Saxon Hiſtoriographer *to witneſſe, who reporting how the* Chriſtian Faith *took roote by little and little among them*

The continuance of the *Parliament* till the Conqueſt.

in their particular Kingdomes with-
in this Land, writeth that King
Edwin *of* Northumberland,
would not embrace the Preaching
of the Gospell, before that hee had
communed, and consulted with his
Friends, his Nobility, *and his*
Wise men, *and that* Sigebert,
the King of the East Saxons, *be-*
ing likewise moved to be Baptized,
did first call a Councell of his Sub-
iects, and finding them all to favour
the motion, did then himselfe also
assent unto it.

But *because the* Synods, *or* Par-
liaments *themselves be most faith-*
full witnesses for their owne doings,
and for that also the Kingdome of
the West Saxons *prevayling over*
the rest, and melting as it were all
their Crownes to make one for him-
selfe

ſelfe, did in the end become Miſtris, or Monarch of the whole Heptarchy, *or* 7 *kingdomes, into which this Land was before divided, I will for a while, leave Hiſtorians, and come to the Synods, firſt ſhewing by one or two examples, what perſons were wont to be preſent at the Parliaments of that Kingdome, and then confirming the like to have bin uſed, after ſuch time as the whole land was reduced to one entire Eſtate and Monarchy.*

Ina, *the* King *of the* Weſt Saxons, *who began his reigne about the yeare after the* Incarnation *of our* Lord Chriſt 712. *began his* Parliament *thus*, I *Ina* by Gods gift, King of the *VVeſt Saxons*, with the advice and teaching of *Cenred* my Father, *Hedde*

my Biſhop, *Ercenwald* my Biſhop, and with all my *Alder-men*, and the eldeſt *wiſe men* of my people, and alſo a great Aſſembly of *Gods* ſervants, was carefull concerning the health of our Soules, and eſtabliſhment of our Kingdome, &c.

Now let us ſee if the three eſtates of Parliament (that is to ſay) the *Nobility*, and *Commons*, may be found here. Firſt the Kings name is expreſly added, the Nobility is ſignified under theſe Biſhops and Aldermen: for before the diviſions of the Realmes into Shirs, every large territory had an Alderman, or Governour, who was after the allotment into Shires, for the moſt an Earle, in token

where-

whereof almoſt all our Earles to this day, do beare the name of one Shire or other. The Comminality is partly included in the words: The eldeſt Wiſemen of my people, which betokeneth the Laity; and partly in the words, a great Aſſemlie of Gods ſervants, which doe notifie the Clergy called ſo then, as it may appeare by the very firſt Chapter of the very ſame Lawes, for that they were conſecrated to Gods ſervice.

And leſt that any man ſhould thinke that theſe *Eſtates* were called together more for their advice and counſel to begiven to the King, then for any authority, or in-

tereſt they had in making the Law. Firſt the preamble calleth thoſe Lawes our doomes, or Iudgements, and the Purvieu ſaith, we bid, or Command in the pluriall number, which alſo may not be reſtrained to the King alone, for honours ſake, as we now uſe to ſpeake, for he is there named, *I Ina* in the ſingular number onely.

Thus much I note, once for all, that I be not hereafter troubled to repeat the ſame things againe.

About one hundred yeares after the death of *Ina*, one *Alfred*, a *King* not of the *Weſt-Saxons* only, as he calleth himſelfe, but rather both of the *Eng-*

Engliſhmen and *Saxons* (as *Aſſe-rius* ſaith, that wrot his life) did (as he telleth) in his *Preface* to his *Lawes*, gather together & put in writing certaine ordinances made by *VViſe men* in ſundry *Synods* of ſundry former *Kings*, as namely *Ina* before ſaid, *Offa* the King of *Middle England*, and *Ethelbert* of *Kent*, the firſt *Chriſtned Prince* of all the *Saxon Nation*, which Collection of *Lawes*, he alſo ſaith, that hee ſhewed to all his owne *VViſe men*, and they likewiſe thought themmeet to be obſerved.

But what maketh it to the three *Eſtates*, will ſome men ſay, that theſe Kings and their *VViſe men*, which may wel ſeem to be but their *privy Councellors*, did

did eſtabliſh Lawes? Yes, very much; for here the word *Wytena, wiſe men*, doth include the *Nobility* and *Commons*, becauſe they bee *Councellours* of the Realme, (for the time) in reſpect whereof the aſſembling of them, was of ſome called *Wytena Gemote, a meeting of the wiſe men*, (as I told you) and of other ſome it is termed *commune Concilium regni*, the Common Councell of the *Realme*.

And that this muſt bee ſo underſtood in this place, I wil uſe none othet Argument then the teſtimony of *Alfred* himſelfe drawne out of the ſame place: for he ſaith, (as you have heard) That the *Lawes* of K. *Ina* were made by a *Synod* of *wiſe men*,

men, and what thoſe *Wiſe men* were, you have alſo underſtood, by the report of K. *Ina* himſelfe, in the ſtyle of his owne *Lawes*, (that is to ſay) by the *Nobility* & *Comminalty* beſides the *King*.

Furthermore, that I loſe not another advantage offered mee by this authority, I muſt alſo gather thereby, that not onely the Kingdomes of *Northumberland*, *Eaſtſex*, and *Weſtſex*, uſed the three eſtates in making their *Lawes*, but alſo that they of *Kent*, and *Middle England*, maintained the very ſame Order: For King *Alfreds* words (as you ſee) be one & the ſame for them all, and then conſequently their manner was one and the ſame through all.

But

But now, that I may at the length leave theſe *Heptarchies*, or *petty Kings*, and paſſe to the *Monarchs* and *Great ones*, the ſame *Alfred*, (after that the ſame *Nations* had yeelded themſelves unto him, and were ſhrouded under his protection againſt the furious ſtormes of the *Daniſh Invaſion*) did at one time conclude a *peace* with *Guthrum*, the King of the *Danes*, the ſtyle whereof beginneth thus, *This is the* Peace *which* King Alfred *and* Guthrum, *and all the* Wiſe men *of the* Engliſh Nation *have taken, &c.* Loe here you ſee *Ealra wytena Gemote*, An Aſſembly of all the *wiſe men.*

After him *Edward* called his

his *wiſe men* to *Exceſter*, and conſulted with them for the better obſervation of the *peace* of his owne *Realme*. And he alſo at another time, by the advice of the *wiſe men*, renued and confirmed the *League* that *Alfred* had taken before with the *Daniſh Captaine*.

King *Athelſtan* concludeth his famous Parliament holden in *Gratly*, thus; All this was ordayned in that great *Synod* at *Grately*, at which was the *Arch-Biſhop VVolſhelme* with all the *Noble-men* and *VViſe men* that K. *Ethelſtan* gathered together.

And the ſame King did alſo afterwards call another *aſſembly* of his *wiſe men* of *Exceſter*, to *conſult* for the better *execution* of

theſe

theſe former ordinances.

Edmond the *King* ſummoned a great *Synod* at *London*, both of the order of the *Spiritualty*, and of the *Temporalty*, the which in the ſecond part of the *Law* there made, hee calleth by one generall name his *Witena Wiſe men*, and thanketh them all for their helpe in that adviſe.

After him *King Edgar* publiſhed certaine Lawes, which were made (as he ſaith) by the *Councell* of his *Wiſe-men*.

The like title, and concluſion have thoſe ſtatutes alſo which *King Etheldred* ordained at *Woodſtock*, and the *League* which he tooke at *Aulaf*, and others, the Captaines of the

Daniſh

Daniſh Army, is intituled to be made by him, and all his *Wiſe men*. And certaine other *Articles* there be, though hitherto not imprinted, of a *Parliament* that was aſſembled in the yeare after *Chriſt*, 1008. which fell under the *Raigne* of the ſame *King*, which are there reported to have paſſed under the authority of the *King*, and his *VViſe men*, both *Spirituall*, and *Lay*, in which ſaid laſt ordinances, this one thing for this purpoſe, is worthy the obſervation. That whereas in the beginning of the Lawes, all the acts are ſaid to paſſe from the *King*, and his *VViſe men* both of the *Clergy* and *Laity*; in all the body and proceſſe of the Law

each

each *Statute* ſaith thus; and it is the advice of our Lord, and his *Wiſe men*. So as it ſeemeth plainly that it was a received forme of ſpeech, to ſignifie both the *Spiritualty* and *Laity* (that is to ſay) the *Nobility* and *Commons* by the onely word *VVitena*, or *VViſe men*.

Finally thoſe Lawes of the great King, and *Monarch Canute*, or *Knowte*, which he made at *VVincheſter*, and be yet remaining, doe beare face, and teſtimony, that they were made by him, and his *VViſe men*.

And there is an ancient written Treatiſe entituled, *Modus tenendi Parliamentum tempore regis Edwardi filij Ethelredi*

Ethelredi to be ſeene in many hands, purporting the very order, forme, and manner of all this ſtately *Court*, and ſolemne aſſembly.

Now as theſe written authorities, doe undoubtedly confirme our aſſertion of this continuance of this manner of Parliament: So is there alſo unwritten *Law*, or preſcription, that doth no leſſe infallibly uphold the ſame.

For it is well knowne that in every quarter of the Realme, a great many of *Burroughes* doe yet ſend *Burgheſſes* to the Parliament, which is nevertheleſſe ſo ancient, and ſo long ſince decayed, and gon to nought, that it cannot bee

ſhewed that they have been
of any reputation, at any time
ſince the *Conqueſt*, and much
leſſe that they have obtained
the priviledge, by the grant
of any King ſucceeding the
ſame: So that the intereſt
which they have in *Parliament*,
groweth by an ancient uſage
before the *Conqueſt*, wherof they
cannot ſhew any beginning;
which thing is alſo confirmed
by a contrary uſage in the ſelfe
ſame thing; for it is likewiſe
knowne that they of ancient
Demeaſne doe preſcribe, in
not ſending to the *Parliament*,
for which reaſon alſo, they are
neither *Contributers* to the *Wages*
of the Knights there, neither
are they bound by ſundrie

Acts

Acts of *Parliament*, though the ſame be generally penned, and doe make no exception of them.

But there is no ancient *Demeaſne* (ſaving that only which is deſcribed in the booke of *Domeſday*, under the title of *Terra Regis*, which of neceſſity muſt be ſuch, as either was in the *hands* of the *Conquerour* himſelfe who made the *booke*, or of *Edw.* the *confeſſor*, that was before *him*.

And ſo againe, if they of ancient *Demeaſnes*, have ever ſince the Conqueſt, preſcribed not to ſend *burgheſſes* to the *parliament*, then no doubt there was a *parliament* before the *Conqueſt*, to the which *they* of *other places* did ſend their *burgheſſes*, which ſee-

ing it is ſo, let us come yet nee-
rer, and examine whether the
ſame order hath alſo beene
continued ever ſince that time
or no.

The continuance of the Parliament after the *Conqueſt.*

To looke for a Parliament aſſembled of the *Engliſh Nobility*, and *Commons* ſoon after the *Conqueſt*, were but to labour without expectation of good ſpeed; For *Silent leges inter arma*, and during all the *reigne* of the *Conquerour*, either the ſword was not put up into the *Scabard*, or if it were, the hand was alwaies upon the *Hilt* ready to draw it. So unwilling on the one part were the Engliſh men to beare the yoake, that rather their obedience was to be compelled, then their opinions

to be consulted: and so *haughty* on the other part were the *Norman* victorers, that to be called an *English man*, was in their eye a great contumely, and reproach,

His Sonne *William* also did rather pretend in words some release of the former *austerity* in *government*, then performe it in deed, and *experience*; but his other son (the first *Henry* that ever *reigned* heere) did not onely at his *Coronation* promise restitution of St. *Edwards Lawes*, as we cal them, &c. But also delivered out his free *Chartre* of the grant of the same, in which as *Math. Paris* reporteth, he *acknowledgeth* that he was *crowned by the common Councell* of the *Barons*

of the *Realme* of *England*.

And heere it may happily ſeeme ſtrange to affirme, that this was a full *Parliament*, in which there is no other mention but of the *Barons* onely.

But if it be conſidered, firſt that the *Germans* expound, and render the word *Baro* by *Frethers* a *Free-man*, then that *Math. Paris* ſaith, that the Cittizens of *London* were at that time called *Barons*: And alſo that even yet both the *Burgeſſes* of the five ports, do paſſe under the ſame name; and that every man almoſt hath his *Court Baron*, it ſhall not altogether be without ground to ſay, that both the Nobility and Comminalty of the

Realme

Realme, were meant under theſe words, *the Barons of the Realme*; the rather becauſe that *ſpeech* is accompanied with the words *Common Councell*, by the which all our ancient *Writs*, that be grounded upon old *Statutes*, doe ſignifie the *Parliament*. And for that alſo the ſelfe ſame *Authour* doth afterwards uſe the words *Communis aſſenſus Baronagij*, when he intendeth to ſignifie a iuſt *Parliament*.

Howbeit, ſince I labour not with any penury of *proofe*, I will relinquiſh the advantage of this matter, deſiring onely that may be called to memory, which *Polidor Virg.* hath before acknowledged, concerning the reſtitution of the forme of *Parliament*,

liament made by the ſame King, of whom alſo the *Saxon Chronicles* of *Peterborough Abby*, doe teſtifie, that in the yeare after *Chriſt*, 1123. he ſent his *writs* over all *England*, and bad his *Biſhops*, *Abbots*, and all his *Theigns*, which ſignifieth as much as *Baron* before, that they ſhould come to his *wytena Gemote* on *Candlemas day* at *Gloceſter*. But to leave him, and to leape over *Stephen*, becauſe they ſtrived longer for the *Crowne*, then hee enioyed it: K. H. 2. ſaith, *Math. Paris*, in the *yeare of our Lord Chriſt* 1185. *convocavit clerum regni, & populum cum omni nobilitate apud fontem clericorum.*

Clarken-well.

And yet againe, to paſſe over his *ſon Rich.* that ſpent the moſt

of his reigne in *battaile* abroad, and to come to his ſon *John*, that paſſed a great part of his time in *Civill warres* at home, you may finde in the *Tower*, *inter volumina Recordorum Cancellariæ de Patentibus An. 6. Regis Johannis in dorſo*, this *Writ*, *Rex*, *&c. Vic. Rotland*, *&c. Sciatis quod proviſum eſt cum aſſenſu Archiepiſcoporum, Comitum, Baronum, & omnium fidelium noſtrorum Angliæ, quod novem milites per totam Angliam inveniant decimum militem bene paratum equis & armis, ad defenſionem regni noſtri, et quod illi novem milites invenient decimo militi quolibet die duos ſolidos ad liberationem ſuam, &c.* I read moreover, in the ſame *Math. Paris*, that K. H. 3. did, *Anno Domini*

1225.

1225. call together *Omnes clericos, et Laicos totius regni*, which Aſſembly the ſame writer in ſome places expreſſeth by the words *Univerſalis regni*.

But what need I to hang long upon the Credit of *Hiſtorians*, ſeeing that from this time downward the *Authentick Records* of the *Parliaments* themſelves doe offer me preſent helpe.

Magna Charta Parliament Charter in Parliament.

The great *Charter* of *England*, which paſſed from this *King* about this time, and for which the *Engliſhmen* had no leſſe ſtriven, then the *Troians* for their *Hellena*: beareth no ſhew of an *Act* of *Parliament*: and yet I will proove by the depoſitions of two ſundry *Parliaments*, that it was made by

by the common conſent of all the Realme, in the time *King Hen* 3. for ſo ſaith the ſtatute called, *Confirmatio Chartæ Anno.* 25. *Edw.* 1. in flat termes, and the *Statute* made at *Wiſtminſter*, *Anno.* 15. *Edw.* 3. *cap* 1. ſaith, that it was made by the *King, Peeres*, and *Commons* of this *Land.*

Stat. 15. Edw. 3. cap. 1. Confirmeles 2. Char. et auters Stat. ſt. per le rey Peers et Com.

In the 20. yeare of the ſame King *Hen.* the *Statute* of *Nerton* was publiſhed, which ſaith thus, *Proviſum fuit, et conceſſum tam à predictis Archiepiſcopis, Epiſcopis, Comitibus, Baronibus, quàm ab ipſo rege, et alijs.*

In the 25. yeare of his reigne alſo, was *Statute* of *Marlebridge*, made *Providente* (as it alſo ſpeaketh) *ipſo domino rege ac con-*

voca-

vocatis discretioribus eiusdem regni. Regni tam maioribus quam minoribus provisum est Statutum, &c.

The Statute of *Westminster* the first, which was made in the 3. yeare of King *Edw.* 1. hath this *title*, The establishments of K. *Edw.* made by his Councel, and by the assent of his *Archbishops*, *Bishops*, *Abbots*, *Priors*, *Earles*, *Barons*, and all the *Cominalty* of the *Land* thither summoned. The Statute made at *Gloceſter* in the sixt yeare of the same Kings reigne, is there said to be made thus, *Purvenant le Roy & appelles le pluis discretes de son Royalme auxibien des greindres come des meindres stabilie est, & concordantment ordine.*

To draw to an end, King *Edw.*

Edw. 2. held a Parliament in the 14. yeare of his Reigne, wherein are theſe words, *Le Roy aſſent des prelates, Comites, Barones, & tout le comminalty de ſon Royalme, en le Parlement, &c.* And the like ſpeech hath he in another *Statute* that he made, *Ne quis actionetur pro morte* Petri *de* Gaveſton.

I doe not thinke that I ſhall neede to ſeeke for further proofes amongſt the Records of *Parliaments* after this time, for they doe from henceforth not onely ſhew themſelves in ſuch ſtore and plenty, but doe alſo ſet forth the ſeverall *eſtates* themſelves, the *duty* of their *preſence*, the *paines* of their *default* or *departure*, and *ſundry other*

circum-

circumſtances ſo particularly and plainely, as I might well be charged, if I would ſtand upon them in a matter not doubtfull, to have uſed ſpeech nothing needfull.

And yet leſt any man ſhould ſuſpect, that any of the two lower eſtates of this aſſembly, derived his maine voice in *Parliament* from the authority of theſe latter *Lawes*, I muſt leave him to underſtand, that in one ſhort *Statute* of *Parliament*, holden in the firſt yeare of K. *Rich.* 2. *Statute* 2. *ca.* 4. he may read it foure ſeverall times plainely ſpoken, and this was done anciently, and of old time.

So that here againe alſo, *preſcrip-*

ſcription is ready to ſerve the turne ; and to ſay the truth, this one Law may ſtand for an *interpreter* of all the reſt : For whether they be ſaid to be made by the King and his *Barons*, or by the King and his Clergy and Layty, or by the King and his Diſcreter, men both great and ſmall ; or by the cõmon conſent, or Councell of the *Realme*, as I have already ſhewed ; or by the King and his Wiſe men, or by the King and his Councell; or his Common Councell : or by the King his Earles, Barons, and other Wiſe men, or after ſuch other like phraſes, wherof you meete with many in the *Volumes* of *Parliaments* : It commeth

meth all to this one point; namely, that the *King*, his *Nobility*, and *Commons*, did ordaine and enact the ſame. And which is more, if you ſhall finde any *Acts* of *Parliament*, ſeeming to paſſe under the name, and authority of the *King* only, as there be ſome that have that ſhew indeed, yet you muſt not by and by iudge, that it was eſtabliſhed without the aſſent of the other Eſtates. To take one example for the reſt, the Statute of *Glouceſter* made the 6. of *Edw.* 3. ſpeaketh thus. Our *Soveraigne Lord* the *King*, for the amendment of the Land, hath provided theſe *Statutes* under written. But yet the *Statute* made at *Weſt-*

minſter

minſter the 13. yeare of that King, and the *Statute* of *Quo warranto*, ſet forth in the 30. yeare of the ſame King, alſo reciting the *Statute* of *Gloceſter*; doe plainely acknowledge the one; and it was provided by the more diſcreete men of the *Realme*, aſwell of the high, as of the low degree, being called together; and the other, that it was made by the *King*, calling together the *Earles*, *Prelates*, *Barons*, and his *Councell*. And therefore it is well noted by ludge *Brooke*, and though *Magna Charta* and ſundry other old *Statutes* doe runne in the name of the *Prince* onely, yet the other two eſtates are ſupplied in all good underſtanding.

Againe, whether the forme of an Act be thus, the *King* with

the Aſſent of the Lords and Commons, eſtabliſheth: Or thus, It is enacted by the Requeſt of the Lords and Commons, whereto the King aſſenteth, or thus, by the aſſent of the King, and of the Lords ſpirituall and temporall, and of the Commons it is enacted, or thus; It is enacted by the authority of this preſent *Parliament*: It is alſo one in effect and ſubſtance: For the words *aſſenteth* and *enacteth*, be equivalent in this caſe, as it is holden, 7. *He.* 7. 14. & 11. *He.* 7. 25. Whereas otherwiſe the neceſſity of the *Aſſent* of all the three eſtates in *Parliament* is ſuch, as without any one of them, the reſt doe but loſe their labour: for that fell out upon a time, that the King in *Parliament* wil-

willed, that a certaine man ſhould be attainted, and ſhould loſe his Lands, whereunto the Lords aſſented; and becauſe here was nothing ſpoken of the Commons, it was adiudged by all the *Juſtices*, 4. *Hen.* 7. 18. that this was no *Act* that might binde, and therefore the party was reſtored.

Hitherto of the continuance and conſent of this our Chiefe and Higheſt *Court*, whereunto after I ſhall have added a word or twaine of the Iuriſdiction thereof, I will make an end.

If all the Iudgements, as *Cicero* ſaid, be converſant either in the *puniſhment* of *offences*, or in the

deciſion of *Controverſies*, then is the iudgement of our *Parliament* of as ample authority, as the ſentence of any, or all other Courts whatſoever, for it delivereth Lawes that doe binde all perſons, in all cauſes, as well Eccleſiaſticall, as Temporall, whereof you may ſee a great many of examples in the volumne of the old *Saxons Parliaments*, how ſtrange a thing ſoever our *Popiſh Clergy* of latter times have thought that to be.

It hath alſo iuriſdiction in ſuch caſes which have need of helpe, and for which there is no helpe by any *Law* already in force; and whereas the erronious Iudgements of any Courts muſt be reverſed by a higher authority, this Court doth not onely re-

reverſe the errors of the Kings Bench, which is ſuperiour to all the other, but it may alſo amend the errors Committed in the Parliament it ſelfe, if any ſuch ſhall at any time appeare.

Thus have I runne along our Courts of all kindes, and have ſaid (as I was able) ſeverally of theſe *Lay*, and mixed Courts of *Records*, deriving them from the Crowne, their originall, and drawing them by one and one (as it were ſo many Roſes) from the Garland of the *Prince*, leaving nevertheleſſe the Garland it ſelfe undeſpoyled, of that her Soveraigne vertue in the adminiſtration of Iuſtice: for as *Bracton* ſaith well, *Rex habet ordinariam*

Jurisdictionem, & omnia iura in manu sua, quæ nec ita Delegari possunt, quin ordinaria remaneant cum ipso rege. And therefore whatsoever power is by him committed over unto other men, the same nevertheleſſe remaineth ſtill in himſelfe, in ſo much as he may take Knowledge of all Cauſes, unleſſe they bee *Felonie*, *Treaſon*, or ſuch others, wherein becauſe hee is a party, he cannot ſit in iudgment, but muſt performe it by his *Delegates*.

And this *ſupreame iuriſdiction* reſerved as I told you out of *Britton* tothe *King* himſelfe, is either altogether ſilent, or elſe it ſpeaketh only at the board of his *privie Councell*, the which is ſo incorporate tohim, as that it is ſaid to ſpeak

with

with his owue mouth, and that but rarely alſo, for which reaſon, as you have ſeene before.

Now therefore, as God is highly to be thanked, that theſe *Flowers* of *Juſtice*, are thus delivered forth, and Diſperſed abroad: So is he alſo hartily to bee prayed unto, that thoſe which occupy the place of *Juſtice* by them, may ſo behave themſelves as it may appeare, that they doe not exerciſe the Iudgements of man, but of God himſelfe, the chiefe *Juſtice* of the World; for ſo ſhall the good be ſuccourd, and the evill ſuppreſſed, ſo ſhall the Iudges themſelves be well acquitted, ſo ſhall her Maieſty be duly ſerved, and God himſelfe honoured aright.

It had beene fit, I know, to have added hereunto, as an *Appendix*, the beginning of the *Houſes of Law* commonly termed, for that they did flow out of the *Courts*, the *Houſes*, or *Innes of Court*, and to have annexed a Catalogue, or Table of the *Names* of all the *Chancellours*, *Juſtices*, and *Judges* themſelves. But becauſe there is not, (ſo farre as I can yet learne) any certaine *Monument* of the one, and for that it requireth a great ſearch of *Records*, whereunto I have no acceſſe to Performe the other, I muſt leave them both to ſuch as can, and will better travaile in that behalfe.

MVSEVM BRITAN NICVM

FINIS.